MATRIARCHY IN THE MALAY PENINSULA

MATRIARCHY

IN THE MALAY PENINSULA AND NEIGHBOURING COUNTRIES

BY

G. A. DE C. DE MOUBRAY

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ABBREVIATIONS

C. and T. of S. I. = *Castes and Tribes of Southern India*, in 6 volumes. By Thurston.

Mal. Soc. = *Malayan Sociology*, being four essays by Wilken, translated from the Dutch and furnished with an Introduction by C. O. Blagden, M.C.S. (retired).

Mayne = *A Treatise on Hindu Law and Usage.* By John D. Mayne, eighth edition.

M.L.C. = *Malabar Laws and Customs*, by Lewis Moore.

P. and M. = *Rembau : one of the Nine States ; its History, Constitution, and Customs*, by C. W. C. Parr, M.C.S., and W. H. Mackray, M.C.S., being *Journal, Straits Branch, Royal Asiatic Society*, No. 56.

PREFACE

FROM an inquiry into the custom in the little Malay state of Rembau my inquiries have extended to the general principles underlying all matriarchal custom. This little book contains both of these, the particular and the general inquiry. The Introduction explains the "how" and the "why" of this development.

The particular inquiry into matriarchal custom in the Malay Peninsula is contained in Part III and in the Appendices. They will be of little interest to the general reader except perhaps the two short initial chapters of Part III and Appendices XLI and XLII (the latter about Malabar).

I have endeavoured to distinguish the passages which could with advantage be left to a second reading, or even be skipped altogether, by putting them into small print.

I wish to take this opportunity of thanking the many people who have helped me: in the first place those who have been kind enough to make the statements which form the bulk of the Appendices, and to Inche Omar bin Montel for preparing the map, Appendix XLV. I am also very much beholden to Mr C. O. Blagden for presenting me with a copy of *Malayan Sociology* on its first appearance; to the Hon. Mr H. R. Joynt, M.C.S., for lending me Thurston's *The Castes and Tribes of Southern India*, Moore's *Malabar Laws and Customs*, and Mayne's *Hindu Law and Usage* (eighth edition; I had used the seventh in my research); to the Hon. Mr E. C. H. Wolff, M.C.S., C.M.G., then British Resident of Nĕgri Sĕmbilan, for giving me permission to make use of official documents; and to Mr E. N. Taylor, M.C.S., for some stimulating discussions on the subject of Rembau custom. (Though his *Customary Law in Rembau* has already appeared before this book is ready for the press, I have decided to make no use whatever of it—in an effort at all costs to avoid further delays.)

It will be obvious to my readers how very much I owe to Parr and Mackray's [1] book on *Rembau*. (For one thing, it makes it quite unnecessary to refer to the ancient authorities Marsden and Newbold.) In a sense I owe an apology to Messrs Parr and Mackray. Discovering as a result of Rembau Land Case No. 86 of 1919 [2] that their book was not altogether to be relied upon, I put it entirely aside and relied solely on my own researches. One result is that several "discoveries" of mine I found later to be merely re-discoveries. Latterly on going through *Rembau* I have been more and more impressed with the volume of on the whole correct information which they collected under very difficult conditions.

I should add something on the spelling and pronunciation of Malay words. I feel very much like Lawrence over the spelling of Arabic place-names: the sooner men realize that letters are but the comparatively unimportant symbols, on a superficial plane, of sounds, and on a deeper plane, of images and concepts, the better: there is no fundamental reason for consistency in mere spelling.

My leanings when using the Roman script in Malay are to make full use of the advantage it gives over the Arabic script of being able to secure a fairly good phonetic rendering of words. Now, particularly when dealing with a dialect like that of Rembau, which is in the process of vanishing, the sound of words is variable. Even allowing for that, however, I have to admit inconsistency. Take the oft-recurring word *pĕrut*. The *ĕ* is in the nature of an evanescent neutral sound which allows an easy transition between the two consonants. In purer Malay (the standard is taken from Riau-Johore) I am inclined to think that there is no intervening vowel at all between the *p* and the *r*, the word could be written *prut*. In pure Rembau dialect, on the other hand, that sound is slightly lengthened and broadened into a sound like the second *o* in "hippopotamus." The word should therefore be written *pŏrut*. I have compromised on *pĕrut*.

The difficulty is greater with vowels in the final syllable. A final *a*, unless quite devoid of emphasis (as in the auxiliary verb *ada*, when it occurs in the middle of a sentence) is lengthened into a broad vowel which resembles that in the English word *four*. The word *pĕsaka* for instance I often write *pĕsakō*. Wilken, in recording Mĕnangkabau sayings always writes it *pusako*: I take it the sound is almost identical in the two countries. But, firstly, one usually sees the word written *pĕsaka*, and secondly, funnily enough, there is a tendency, even with the Malay Chief who speaks with a good "brogue," to give the technical words

[1] Mr Mackray died some years ago while still comparatively a young man.
[2] Appendix No. xviii.

of the *adat* less of a brogue than to the rest of his vocabulary, with the result that he sometimes approximates to a standard pronunciation (in which case, to make matters more complicated, final *a* approaches one of the two sounds which *eu* represents in French). I have written *pĕsakō*, at other times *pĕsaka*, though I have, even in the former case, to alleviate a little the sufferings of my readers, not given a phonetic rendering of the whole sentence—more inconsistency on my part! Thus for instance with the term *hĕrta pĕsaka* (ancestral property) it has seemed to me too much of a mouthful for the uninitiated to write *harĕtō pĕsakō*. Take another word: in the *darat* portion of Rembau one rarely hears an old Rembau peasant pronounce the *l* of *tinggal*, he drops that consonant and lengthens the then final *a* (flattening and making tense the cavity of his mouth). I have avoided complication by always writing *tinggal* except when quoting Wilken's *Mĕnangkabau*, where *tingga* occurs.

I have also been inconsistent with the final glottal stop, written in Arabic script either with a *kof* or *hamzah*. According to the standardized Malay spelling adopted in the Federated Malay States they should both be romanized by *ḳ*, but in practice the dot is left out. Why the ordinary methods of romanizing both Urdu and Arabic were not followed and *q* used I have no idea. I dislike the *k* intensely: in the Malay Peninsula and in Sumatra there is not the slightest sound of a *k* (a proper *k* is sounded in the rest of the archipelago), and even the closing of the glottis is almost imperceptible: practically the only effect (as that of the almost equally imperceptible final *h*) is to prevent a distortion of the final vowel. I, myself, have got in the way of imitating the Arabic *hamzah* (softer than *kof*) by representing the glottal stop with an apostrophe. The Malay *mak* or *ĕmaḳ*, mother, in the Rembau dialect I usually write *ŏma'*.

G. A. DE C. DE MOUBRAY.

Steep Farm,
April 1st, 1930.

PART I

INTRODUCTION

ON THE METHOD OF RESEARCH

The difficulties in the way of research in this field have been very great. The field is essentially a legal one and it would be expected that it would have been easy ere now to establish a definite body of customary law by means of case law. The Malay population is, however, comparatively speaking a poor one and disputes among its members seldom reach the Supreme Court, where alone case law would be easy to build up. One result of this has been that the Supreme Court has remained comparatively ignorant of matriarchal customary law. The custom has actually been administered by District Officers and Assistant District Officers sitting in Civil Courts as Magistrates and in Land Courts under the powers given to Collectors of Land Revenue to settle disputes and to give orders as to the partition of the estates of deceased persons. Owing to the fact that these posts both in Malacca and in Negri Sembilan territory have till recently been graded low in the Civil Services, and that long periods of service in individual posts are rare nowadays in Malaya, there has been on the whole a rapid succession of fairly junior officers passing through these posts, and these officers have moreover rarely returned to a matriarchal district for further periods of service. This has resulted in comparative ignorance of the custom throughout the service. These conditions have favoured a rapid evolution of the custom under the impact of modern economic conditions. The fact that evolution was proceeding under their very eyes had hitherto been appreciated neither by the peasants themselves nor by the District Officers (including myself). The conflict between new and old ideas had appeared to all parties merely as uncertainty and conflict. This state of affairs had led to bad decisions by the officers administering the custom, which had further intensified the uncertainty of the atmosphere. When a Rembau headman gives expert evidence on the custom in

Court it often appears as though he were lying bravely in support of his own tribe. I suggest that though this may frequently be the case, and though the ideal of absolute veracity is certainly absent, the phenomenon is usually more complex.

What the headman does is to twist to the advantage of his tribe the sayings which are theoretically the storehouse of the custom, but which I now think are usually out of date or have even never been more than mere appearances of the truth. As they no longer mirror the custom closely the temptation becomes overwhelming with their help to distort the custom for the advantage of the tribe.

My early conviction of the unsatisfactoriness of this type of expert evidence taken in Courts of Law led to the first modification in my method of research: going outside the courts and taking statements from individuals in a purely private capacity.

The High Court of Madras in laying down a rule for judging the validity of local custom alleged to modify the general custom once said: "What the law requires before an alleged custom can receive the recognition of the Court, and so acquire legal force, is *satisfactory proof of usage, so long and invariably acted upon in practice, as to show that it has, by common consent, been submitted to as the established governing rule of the particular family, class or district of the country.*" Such proof of long-continued usage I have found quite impossible to collect. The minds of Rembau Malays apparently do not work in this way. They find it possible only in rare cases to recall instances to illustrate any particular point. Furthermore, their statements are most vague and liable to be self-contradictory. It must be remembered that this is entirely a peasant population and that their minds are completely untrained. The deponents are almost without exception incapable of a connected statement on any part of the custom. Even the best of them would start getting tied up with "sayings," and then going off at tangents. The average deponent comes out learnedly with a saying which may mean anything or nothing such as "*Jĕput: Hantar*" (invite: send), imagines he has given you a clear and conclusive expression of the custom, gives an expressive

grunt to drive his point home and lets himself be carried off on an apparently unassociated chain of ideas expressing themselves in sayings. The only way of getting on is to keep the unfortunate man to the point by a series of questions. His vague ideas and his powers of expression are subjected to such a strain in this process, his contradictions and attempts to clear them up tire him so much, that he soon really begins to feel himself unfortunate, the fact becomes so obvious that one has to switch off on to another subject, that for instance of tribal dignities and genealogies, in order to have a pleasant ending to one's interview. The only deponents capable of a clear and direct reply to the questions were the "Malay Assistants" Suboh and Mohamed Pilus and Inche Omar. Even they, however, are troubled by the changes in the custom which have taken place and which they cannot altogether analyse.

This explains the main difficulty in the investigation of the custom. It is a difficulty which must, however, be met. In a small portion of country characterized as a whole by the *Adat Těmĕnggong*, a form of patriarchal custom which has now assimilated itself almost entirely to Muhammadan Law, there do exist these tribes of slightly different origin following a *matriarchal* custom. Unless one follows the (to me) preposterous policy of ignoring this custom altogether it has to be ascertained somehow.

My interest had hitherto centred round the State of Rembau. I had been merely endeavouring to ascertain the Rembau custom. I now suggested to myself that this apparent conflict of ideas on particular points of the custom might possibly be limited to Rembau. (There is a proverbial saying which makes out the Rembau Malay to be particularly shifty : *Keche' anak Malaka, pio' pilin ana' Rembau, sombong ana' Pahang* and so on—wheedlers are the men of Malacca, twisty those of Rembau, arrogant those of Pahang.)

On this idea I developed a new technique. I had been much impressed by the following extract from the judgment of the Privy Council in Sivanananja versus Muthu Ramalinga, quoted in Mayne's *Hindu Law and Usage*:

"Their Lordships are fully sensible of the importance and justice of giving effect to long-established usages existing in particular districts and families in India, but it is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence." *Why not invert the theorem and argue that so far as local custom was not clear one should look for a general custom common at least to the majority of matriarchal groups in the Malay Peninsula?* In the absence of sufficiently clear local variations the general custom would be held to be valid over the area in question (or to be more exact over all natives of Negri Sembilan, Selangor and Malacca subject to matriarchal custom).

There was no information available on the general custom. Monographs had been published on Jelebu and on Johol, but the researches in those cases had been confined to the political aspect of the custom: to tribal dignities.

I set out to accumulate this information myself. It forms the bulk of the appendices. The process of collection was unavoidably characterized by extreme rush. (My first outside statement was taken on the 4th of September, 1926, forty-three days before I left on transfer for Trengganu. A month before the date I had been asked whether I would accept a transfer to Trengganu. I had asked for two months' postponement in order to collect further material on the customs and dialect; I had much official work and was also collecting material on the dialect.) I was unable during the period to work up any of the results as I obtained them.

Nevertheless I was at this time under the impression that I was clearing the ground very considerably. General outlines were beginning to shape themselves, and I believed I was discovering a sort of general average custom (albeit with certain strongly marked local variations). I now believe however that my mind, perhaps abnormally avid of general principles and inclined to find or create some category in which to pigeon-hole each fact, was acting selectively in its appreciation of the evidence and that I was singling out as possessing special value

all evidence which "threw a light" on a problem, which expressed or appeared to imply an hypothesis by means of which already known but imperfectly related facts could be brought by intuitive perception into organic relationship with each other.

I acquired the conviction during this period that the custom was rational throughout its whole extent, that its very details were the superficial expression of inherent general principles.

I hardly had the leisure to look at these accumulated results for another year and a quarter. When I went through them I came to the conclusion that my previous hope had been vain of finding what statisticians call a "mean" as distinct from an "average," a most usual variety of each element of the custom. My results were not susceptible of treatment by statistical methods, but they had on the other hand thrown much "light" on the custom.

In the course of coming to the conclusions as they are set forth in the following chapters I analysed my methods. It was then only I came to the conscious decision that mathematical methods of treating the evidence were inadequate and that the only hopeful line of attack was a search for general principles. The enlarged field of evidence made this search for general principles far easier and safer than if my research had been restricted to the Rembau custom.

I classed these principles as static and dynamic.

The former represented mere correlations, the statement of complementary phenomena; the latter represented forces which had brought about changes in the custom.

The following are examples of what I classed as static principles: that property follows the daughters, and where there are no daughters the female blood relations who supported the deceased; that the duty to support an individual carries with it an interest in his property; that in all cases of inheritance the land goes to the tribe on which rests the onus of support.

The dynamic principles were, as I have indicated, historical. My small knowledge of Malabar matriarchal custom gave me a comparative outlook on the custom. With the help of

Wilken's *Malayan Sociology* I was able to form a rough idea of the present social conditions of the Mĕnangkabau tribes which could be presumed to have altered very little since the date of the migration. Every difference from these conditions probably represented a development away from them: it should be possible by analysis to ascertain the circumstances which were the cause or the occasion for the evolution in question.

The dynamic principles which I analysed were:

(i) The migration from Sumatra with the changes in social life consequent on it, entailing for instance a breach in men's hitherto extreme economic and social dependence on their mother and the foundation of a new unit, the parental family, composed of father, mother and children.

(ii) The rubber boom bringing about great changes in the economic life of the people. It became the usual thing for Malays to spend their time obtaining the grant of forest land, felling and clearing it and planting it with rubber, then selling it to Chinamen. Land which had been planted with rubber ceased in this way to possess the properties which had been considered by these tribes to be inherent in land, namely that of being entailed within a family and within a tribe, that of being under the control of the headmen of tribe and family: it became as marketable a form of property as goats or buffaloes had hitherto been.

By the light of these principles I re-examined the evidence with a view to checking the value of my generalizations. One could not of course expect all discrepancies to be cleared up. The muddled minds of the individuals from whom I had obtained statements precluded all possibility of the evidence being harmonious. But I postulated that in those cases in which there appeared to be two fairly homogeneous bodies of conflicting evidence *the test of the truth of my principles must lie in their ability to solve the apparent conflicts of evidence.*

I submit that my method has had a very real success in solving the two greatest conflicts of evidence of all those I have met with in the Rembau custom, namely that centring round adoption and that centring round the partition of

property acquired during marriage when the wife dies before her husband. In the latter case I arrived at the view that one of the conflicting statements of the custom was roughly true at a time when the value of acquired property was comparatively small, a state of affairs which must have been almost universal before the rubber boom, and that the other statement of the custom omitted an important qualification.

I formulated the general theorem that *apparently conflicting accounts of the custom frequently represented different stages in its evolution* : the conflict in statement might be interpretable as actual conflict between two successive evolutionary forms of the custom, neither of which was as yet the acknowledged victor. Another general theorem was that "sayings" as often as not represented a false generalization from an incomplete set of facts (as one would expect on the part of peasants).

These methods of research had actually been evolved in complete ignorance of the fact that I was walking, as it were in my sleep, through one of the greater battles of modern anthropology.

I shall endeavour to sketch the different attitudes which underly the varieties of anthropological theory.

There is a "*psychological*" *attitude* which attributes all anthropological "facts" to universal characteristics of the individual human mind. Without as far as I am aware exploring or attempting to define the mental characteristics which are the basis of anthropological characteristics, this school argues that the development of the human mind follows a similar course throughout all branches of the human race, and that variations in culture (in the widest sense of the word) merely express differences in the degree of mental development of the individuals of each particular race. This is the argument in Frazer's *Golden Bough.* There are two schools which have come into being as a reaction against this one, that which postulates, or endeavours to prove, that primitive mentality is fundamentally different from civilized mentality; and the sociological school, which postulates instead of the individual mind a collective consciousness as the cause of forms of culture.

Then there are schools which do not press their questioning

to fundamentals, which are content to *follow out the effects of forms of culture on each other*, their geographical and historical relationships.

There must of course be an *evolutionary school*, a body of men who endeavour to apply in every field the principle of Darwinism.

Lastly there is the *functional school*, which insists that each anthropological fact has its *raison d'être* and that research for the time being at least would yield richer results if one concentrated on finding what function to society was filled by each custom, or myth or form of organization.

I wish to emphasize the point that I stumbled across this functional method without knowing that it was a recognized anthropological method. This fact detracts from the value of my researches by showing me up as an amateur. On the other hand, I maintain that the fact that an absolutely unbiased man like myself was gradually forced to adopt this method in order to be able to deal at all with a mass of apparently chaotic and conflicting evidence is a strong argument in favour of this still very new anthropological method.

There is another point, however, which I also wish to emphasize. In, as it would appear to me, the exuberance of youth this functional theory would wish to supersede all other methods. Malinowski seems to imply as much in his criticism of the diffusionist, the comparative and the historical methods. In the study of this peninsular matriarchal custom, however, it is clear that these other three methods have their place. There is no question about the common origin of peninsular and Sumatran matriarchal custom. There has therefore been diffusion [1] from Sumatra. There has further been the recession of the *adat pĕrpateh* all along its boundaries under the impact of the *adat tĕmĕnggong*, a most direct form of diffusion ; and Mohammedan law and religion, coming from Arabia, have affected the custom, generally by weakening its hold on the population, and in specific ways chiefly by leading to alterations in the marriage customs. There may possibly exist strictly

[1] Though not of course diffusion in the usual sense implying the spread of customs from one *race* to another.

historical evidence as to changes in the custom. If it does exist it cannot but throw a flood of light on the present custom. The knowledge of changes in the custom and of changes in the social and economic condition of the people, if brought into correlation with each other, must necessarily be highly illuminating. I would suggest that this particular field is of unusual interest owing to the undoubted derivation of the one custom from the other, a condition which would appear rare in the material normally at the disposal of anthropology. The amount of strictly historical material being, however, very limited,[1] it is legitimate to compare the two forms of culture in order to obtain a side light on their development.

In the measure, therefore, that this monograph is deemed successful there is proof of the legitimacy and helpfulness of combining with the functional method the diffusionist, historical, and comparative.

When I had reached this point my mind carried the argument on into a critique of the functional method and an analysis of its implications. This is undoubtedly a very great digression, but I think the principle is sound that when a line of inquiry has brought one face to face with fundamental questions one should, if one's thinking powers hold out, take the opportunity to press the attack right home, in other words to get down to yet more fundamental questions. This is the most legitimate cradle for philosophy. Rather than trust solely to a coterie of professional philosopers it is surely desirable that whenever practical men meet a problem which leads them a little below the outer skin of experience they should gird their loins and arduously follow the trail.

This is what I now propose to do. Let us examine together the postulates on which the functional theory is based and its implications.

I shall follow Malinowski in his article "Anthropology" in the 1926 edition of the *Encyclopædia Britannica.*

How have clans or organic tribal units come into being? Malinowski bids us consider the family (in the narrow sense, consisting of a man, a woman and their children). By extension of co-operation beyond this unit, particularly in economic, legal and ceremonial matters, and at the same time an extension of the idea of kinship in a one-sided manner, that is, paying almost exclusive attention to relationship in either the male or female line, and with this extension of kinship a correlative extension of

[1] I have to admit the very great handicap of not being able to read Dutch: I have thereby most probably missed much comparative and historical material.

the prohibitions against incest, the organic tribal unit develops from the family: the matriarchal "*suku*" or "*prut*" which is the subject of the later chapters of this book. It should be noticed that the extensions of co-operation and the principle of kinship are causes of the development or existence of clans merely in the sense that the word cause is used by physical scientists. The extension of co-operation and kinship produce a clan much as the addition of a solution of sodium sulphate to one of barium nitrate produces an insoluble precipitate of barium sulphate, as a rise in temperature makes most liquids expand or increases their vapour pressure. The word "clan" becomes little more than a shortened description of a state of society in which co-operation is extended beyond the close family circle, and with this co-operation is correlated a one-sided extension of kinship. We are merely dealing with the correlation of phenomena. We have not got down to the question why they are correlated or why co-operation should begin to extend beyond the family.

Malinowski's analysis of the family itself, of monogamous marriage, of the function of the Supernatural, go much deeper. "The family is the link between instinctive endowment and the acquisition of cultural inheritance, in that it permits the biological bonds between parent and infant gradually to ripen into social ties." I should myself be inclined to add to this that the biological bonds between the children themselves are no less important. Modern pedagogy recognizes the "only child" as one of the great evils of modern society. It is in the play of children amongst each other under the guidance of the mother, and later in the initiation into the activities of practical life by father or mother, that the children's instinctive endowment is developed, and by the addition of their own and their parents' experience that the "social heritage" of one generation is passed on to the next.

In this way we have analysed not how the family mechanically comes into being, but the *raison d'être* for its existence. We have analysed *the purpose it fills in the scheme of things.*

The *monogamous marriage*, again, provides the best form of family. "It provides the best opportunities for effective sexual selection. It also supplies the best training for the future cultural work and sociological orientation of the young individual."

What is the function of the *Supernatural*? According to Malinowski, the savage, as far as his knowledge allows him to rely on experience, reason and technical ability, does not use magic. Only when in spite of knowledge and effort the results still turn unaccountably against him does he resort to Supernatural means of filling the lacunæ in his practical power. As he develops material culture he meets difficulties to override which he needs faith or a mystical outlook—and these are supplied by magic.

There is again no "causing" of magic in the current sense of the word by the difficulties met, but it would appear that magic is the best means for enabling the man at this stage of culture

to avoid being " bowled over " by his difficulties. Magic fulfills this " purpose ".[1]

We have found that the family, monogamous marriage and magic are the essential prerequisites to certain stages of culture. The existence of the family and of magic would even appear to be essential to the existence of human society at all—and I think I am correct in saying that at least rudimentary forms of family and of magic are universal. Malinowski's thesis that " there is not one single tribe where sexual licence is found untrammelled, where anything approaching promiscuity obtains ", implies the universal existence of the family, at least in a rudimentary form.

In other words the family and magic fulfil very essential functions without which human society would not be adapted to life. We might argue that without the institutions of family and of magic (or of religion in higher cultures) the human race would die out or would not have existed.

I have made this point in order to make it clear that we are using the word function in exactly the same sense as it is used in botany or zoology. Certain organs perform certain functions, and even if we only altered the form of an organ to that of some other species, the species tampered with would cease to be adapted to its environment and would die out.

Now it is argued by more than one school of thought that *every* biological characteristic has its function, its purpose. Malinowski says: " The functional view of culture insists, therefore, upon the principle that in every type of civilization, every custom, material object, idea and belief fulfils some vital function, has some task to accomplish, represents an indispensable part

[1] I would invite your attention to the fact that these analyses are not arrived at by a logical train of reason. I do not see how they can be arrived at by any other means than by intuition. This remark brings us into the midst of another exciting battle-ground: that raging round Bergson's exaltation of intuition as a means of arriving at truth, attacked I believe most strongly in France. It would, one would think, be almost unnecessary to remark that the obvious fallibility of intuitions is not a very strong argument against their use. As Rashdall puts it in *The Theory of Good and Evil*, p. 84: " Neither the slow development of the moral faculty nor its unequal development in different individuals at the same level of social culture forms any objection to the a priori character of moral judgments. . . . Man's moral judgments may be intuitive, but they need not be infallible. Self-evident truths are not truths which are evident to everybody. There are degrees of moral illumination just as there are degrees of musical sensibility or mathematical acuteness."

It would appear obvious to myself at least that the theories advanced by Malinowski and those I have developed later in this book are by no means to be taken as true *because* they have been arrived at intuitively. Intuition is only a means of research, a means of arriving at truth; the reasonableness of the conclusions, their coherence with other accepted truths, needs to be confirmed by the exercise of logical reason. (This is the logical counterpart of William James's essentially psychological theory of pragmatism.) Those who have done mathematics will appreciate the analogy that whereas the differential of a function can be arrived at by a chain of logical reason, it is impossible to reverse the process, to integrate a function, in the same manner. A form of intuition must necessarily be relied upon to arrive at the integral of a function, though, the conclusion once attained, its accuracy can be checked by a chain of logical reasoning.

within a working whole." The Darwinian evolutionists likewise argue that every characteristic of every surviving plant or animal has the function of adapting it in some way to its environment.

These theories are most extraordinarily useful to me. My method of research has developed into an analysis of the function of individual customs as its first step. The postulate that each custom had a function and was not a chance phenomenon would be a most useful one to adopt. But I fear that it would be illegitimate to adopt this postulate without at least further analysis. Malinowski himself leaves a loophole in that his idea of function is not precise. As we have seen, his theory of the clan and the family are fundamentally different in type. As regards the clan: he analyses some correlative factors the concurrence of which bring a clan into being. With regard to the family he analyses a purpose "outside" the family for which the family exists. It is the same with regulated sexual licence, with magic, with primitive forms of wealth, and with mythology, they each fulfil a purpose outside themselves. But in view of his analysis of the clan it may be that Malinowski would not be prepared to agree that *all* anthropological facts had a purpose of the same sort.

In another branch of biology, botany, as long ago as 1884 Nägeli made the distinction between "Anpassüngs-charaktere" and "Organizations-charaktere" (adaptive and genetic characteristics). This distinction would still seem to hold good. Stahl and Haberlandt have very much increased our knowledge of the function of peculiar organs of plants, but the experiments of Jordan, de Bary and Rosen on *Draba verna* still hold good to the best of my knowledge. This species has been analysed into 200 distinct varieties, the differentiating characteristics of each variety being inherited in a constant manner. It has been found that several of these varieties are often associated together at one spot without one having any apparent advantage over another, and that furthermore individual varieties do extraordinarily well in different types of environment. It would follow that the specific differences between these varieties play no part in the adaptation of a variety to its environment. No other function of these specific differences has yet been suggested (as far as I know).

It is therefore rash on the strength purely of *experience* to lay down that every fact and phenomenon fulfils a function. On the other hand the philosopher needs working hypotheses in such matters: and purely as a working hypothesis it may be legitimate for him to postulate that from what we already know of the universe all its parts are rationally corellated with each other. It is reasonable for a philosopher to arrive like Rashdall at the conclusions that there is a true "end" of the Universe,[1] that there is one absolute standard of values, that the end of the Universe must be the greatest good that is possible, and that this good necessarily flows from a will of perfect goodness but of

[1] *The Theory of Good and Evil*, Vol. II, p. 286.

limited power.[1] It would be reasonable for us to use such a theory as a tool provided that we kept its fallibility clearly in mind. Actually I have followed a different line: I have not as a first step constructed out of well-articulated reasonings a hypothesis which I have then proceeded to apply; rather have I, in the course of collecting evidence and merely by consideration thereof, arrived at the intuitive judgment that in the field of matriarchal customary law I was dealing not with chance phenomena but with rationally correlated phenomena. It is merely subsequently that I have sought to justify the intuitive judgment by a rationally constructed hypothesis.

[1] *Ibid.*, Vol. II, p. 290.

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PART II

COMPARATIVE

CHAPTER I

INTRODUCTORY SKETCH OF THE SOCIAL AND POLITICAL STRUCTURE IN THE MALAY PENINSULA, MĔNANGKABAU, CANARA, AND MALABAR

§ 1. THE MALAY PENINSULA

THE following is a short diagrammatic sketch of matriarchal custom (*adat pĕrpateh*) in the Malay Peninsula. The method of government has altered very considerably with British rule. To make the description more easily intelligible it is described as it was before the British protection. The remains of the old political structures no longer function as the mechanism of government: they are survivals.

There was a federation which called itself the Nine States (*Nĕgri Sĕmbilan*). The identification of the states which at different times formed part of this federation (which rarely if ever contained as many as nine states) does not concern us here. A plan of the original federation, much larger than the area at present under matriarchal custom, forms Appendix XLIV. Theoretically this was a federation of equal states each with its ruler called *Undang* (Lawgiver). The constitution of all but one of these states was a mixture of democracy and oligarchy. It was democratic in that theoretically any peasant could rise to headship of a tribe: oligarchic in two ways, in the leading position taken by the senior tribe, which alone could provide the Lawgiver and a number of the great officers of state, and in the fact that the *Undang*, in his council of chiefs all elected for life, was in no way subject to the control of the electorate.

The population consisted exclusively of peasants following matriarchal custom. At their head, however, they had a royal ruler whom they had specially obtained to rule over them. Besides being the head of the whole federation, he was the

ruler of the ninth state Sri Menanti (originally part of the state of Ulu Muar). He and his family followed patriarchal custom (*adat tĕmenggong*). Theoretically, and apparently also in practice (as the other rulers were jealous guardians of their liberty), he was *primus inter pares*. His function was primarily to defend the federation, secondarily to act as final Court of Appeal. Only he, moreover, had the power to inflict the graver penalties of the law.

Each state had its territorial limits. It was composed of tribes which had no territorial limits. The different states each comprised a different number of tribes (*suku*), and each tribe was represented as a rule in more than one state, but the parts of it belonging to different states had no political or social relationship to each other. There was usually one senior tribe (*suku*) different in the various states, which had acquired its seniority and greater political and economic rights through having been the pioneer tribe in that state. The senior *suku* theoretically owned all the soil, owing to a fanciful extension of the matriarchal theory, the original head of the tribe having married a daughter of the chief of the aboriginal tribe which roamed over that stretch of country.

Parr and Mackray give the following account of the peaceful Mĕnangkabau invasion: " Tradition has summed up the origin and antecedents of the people of Rembau in the saying '*Gagak hitam, gagak sĕmui, turun dĕri bukit berkaki ĕmpat, bangau puteh datang dari laut bĕrkĕpak sayap*'. 'The black crows and the grey crows descended on foot from the hills, the white egrets flew over on flapping wings from the sea'. The crows from the hills are allegorical of the aboriginal tribes, while the white egrets typify the Mĕnangkabau settlers, whose advent is given by local authority to the year 1388 A.D. To intermarriage between these early Sumatran fathers and the original inhabitants of the State, the Rembau *waris* tribe traces its origin.

" The tale of the occupation of Rembau by the 'crows' is contained in three distinct traditions connected only by the extravagant hypotheses of Malay ingenuity. . . . The third and best known tradition relates in great detail the settlement in Rembau of Batin Sakudai, also called Bĕndahara Sakudai. His three daughters To' Mudik, To' Mĕngkudu and To' Bongkal, are accepted as the respective ancestors of the Klana Petra, head of the *Waris Darat* of Sungei Ujong (by marriage with a Pesawi man), of the Bendahara of Pahang (by marriage with a Saiyid), and of the *Waris Jakun* of Rembau by marriage with the Lela

Balang, a Mĕnangkabau man of the Paya Bidara tribe. The Sakudai occupation thus forms the link between the aboriginal descendants and the Muhammadan immigration from Sumatra.

"The peaceful character of the Muhammadan settlement contrasts strongly with the history of foreign invasion in Perak and Selangor, a tale of successful piratical raids. Yet the customary saying that 'The round isle of Sumatra, and the stretch of the Malay lands are encompassed in the expanse of the Mĕnangkabau empire' implies that this occupation of Rembau was regarded primarily as an expansion of the empire of Pagar Roiong, and accounts for the close adherence of the earliest settlers to the polity and customs obtaining in their mother country. The predominant position of the *Waris* in the Rembau constitution, and their claim to be heirs of the soil, rest solely on the right of inheritance in the direct female line, a custom peculiar to the *Adat Pĕrpateh.*

"The soil of the state vested in the aborigines, and from them passed to the heirs (*waris*)—the descendants of aboriginal mothers by marriage with the earliest immigrants. As settlers of the eleven immigrant tribes entered the country they acquired from the *waris* not merely the plots of land actually cleared by them, but the right in perpetuity to considerable tracts embracing valleys or portions of valleys adapted for rice cultivation.

"The tracts of country thus acquired by a nominal payment or by a promise of payment never fulfilled, are known as redeemed lands (*tanah bĕrtĕbus*). On redeemed lands no tax or tithe on grain or crop were paid to the *Undang* or to tribal chief.

"There were left then to the *waris* after the redemption of tribal tracts, the hills and forests and such valleys suitable for rice cultivation as were not redeemed. These two classes of land are known as forest lands (*utan tanah*) and unredeemed lands (*tanah ta' bĕrtĕbus*), or waris land (*tanah waris*).

"Different rights were obtained by the occupiers of holdings in these different classes of land."

It is of cardinal importance to bear in mind that redeemed lands were tribal lands. The sayings prove this fact.

"Dĕri ulu ayĕr mĕnyencheng,
Ka-ilir ombak mĕmĕchah waris yang punia,
Sawah yang bĕrjinjang,
Pinang yang bĕrjijir, lĕmbaga yang punia."[1]

(Waters running from their source
To the breaking waves at their mouth belong to the waris,
Narrow rice fields,
And areca palms in rows belong to the tribal chief.)

[The above is my own translation. Parr and Mackray add the gloss after "tribal chief", "the guardian of the inherited rights of the tribe". To continue the quotation :]

[1] P. and M., pp. 2, 3.

"So far from there being no such thing as joint-ownership by the inhabitants of a tract of cultivated lands (as stated by W. E. Maxwell) the land was not an individual but a common property in the early days of Rembau tribal history. But as time lapsed a family (*pĕrut*)—an exogamic unit—in a tribe acquired by length of effective occupation,[1] a transmissible, but not an alienable, right to a particular plot of rice swamp in the redeemed valley, and to the high land (*kampong*) on which the houses stood. Such an ancestral holding ranks colloquially as the property of the mother of that family—but the nominal holder at any given moment is merely a fiduciary for the family. Ancestral property is vested in the females of a tribe in tail female."

Let us first say that the distinction described above between redeemed and unredeemed lands has lost every shred of significance it once possessed. It is interesting purely as a matter of history, and this is the last that shall be heard of it in this book.

A point of extreme interest is the manner in which the incoming tribe arrogated to itself by virtue of its custom the ownership of the soil of the State. I have already said that this was done by a fanciful extension of the matriarchal theory. To see just how fanciful it was we need only consider the closely parallel case of the *Moplahs* on the west coast of India, differing only in that the native and not the invading race followed matriarchal custom. The invaders were Arabs, Moslems following a semi-patriarchal custom. They married and converted to their own religion Nair women following matriarchal custom. The children of these unions were subject to matriarchal custom, property being vested in the daughters, the ownership of land being therefore scarcely, if at all, affected by the invasion. There was no extension of the matriarchal principle to confer rights of ownership of land on Arab women brought over by the invaders. Yet this is what was done by the Mĕnangkabau invaders of the Malay Peninsula. Owing to the leader of the first batch of invaders having married a daughter of the aboriginal chief the invaders *arrogated to their own women as a body the ownership of all the land in the state.* It is conceivable that not only the leader but every member of the first batch married a native woman—but the extension of the theory would still be fanciful *unless every native woman became the wife of a member of the pioneering tribe.* That body could then alienate rights to Mĕnangkabau women.

This is a very good example of a legal fiction.

I take it it could only have grown up under conditions of very great cultural superiority of the invading race and of the almost complete absence of developed rights in land on the part of the native race. I take it that the Jakun were at that time like all other aborigines all over the Peninsula at the present day, that their cultivation was entirely shifting, they had no fixed place of abode, they only came back to old clearings after a long interval of time, if ever, except when fruit trees grown from the seeds of

[1] The argument is far from sound.

the fruit they had eaten were sufficiently numerous for them to come back for the sole purpose of collecting fruit during its season; there was land in excess of all the possible needs of themselves and their progeny for generations. I submit that there was no inkling of the idea of ownership of land among them—but merely that of the right to occupy land during the short period of effective occupation. The Měnangkabau Malays, on the other hand, with their settled villages, must already have had a theory of ownership of land which they introduced into the Malay Peninsula. The Jakun being incapable even of comprehending the idea of ownership of land, it became the obvious course for the Běduanda (the *waris* tribe) to transfer the idea of property in the soil from the Jakun women to their own women.

The head of the State, the *Undang*, was elected from within this senior tribe. The sovereign authority within each state was the *Undang* in his council of chiefs. Approval of a measure had to be unanimous (*bulat*) as in the old kingdom of Poland. As chiefs were in no sense delegates the form of government was essentially oligarchic. Each tribe was originally an *exogamic* unit. Marriage between members of one tribe was incest. Nowadays in certain cases the main subdivisions of a tribe are the exogamic units.

Each tribe consists of a definite number of families, *pĕrut* (= belly or womb). In certain cases there is a definite intermediate unit the *kampong*, in certain other cases there are mere groups of *prut* forming subdivisions of the *suku*.

The head of a *suku* is called a *lĕmbaga;* the head of a *kampong* *bĕsar kampong* (the man big of the kampong); of a *pĕrut, ibu buapa'* (= mother and father).

The senior tribe also provides a number of as it were privy council posts.

All these posts are elective. But there is a most striking peculiarity about the elective principle, the complicated system of rotation called *giliran*. Theoretically each *pĕrut* in turn has the right to have each chieftainship of the tribe filled from within its ranks. The *giliran* is most complex within the senior tribe, each particular chieftainship having its definite *giliran*, the *giliran* of the different chieftainships of the same rank being not necessarily identical. In practice the result is that if he is a suitable man the *ibu buapa'* of the *pĕrut* the turn of which it is to supply the chieftainship is elected as a matter

of course, and provided his luck is in as regards rotations, he climbs up through the grade of *bĕsar kampong* to the headship of the tribe or to a privy councillorship and thence to the undangship.

Property in land was entirely vested in the women. Whatever the state of affairs many have been fifty years ago the ownership of property is scarcely if at all communal now—but each *pĕrut* nevertheless jealously guards the integrity of all ancestral land (*tanah pĕsaka*) belonging to its members, and so does the *suku*. It is one of the chief duties of the tribal officers to guard this integrity.

There are two main categories of property, ancestral (= *pĕsaka*), over which the tribe and family have a very strong lien, and acquired property (*charian*), over which they have none or very little. A man in some of the states can now own acquired landed property. Formerly he almost certainly could not.

Before the principle was weakened of only women owning land, the men were invariably supported before marriage by their mothers or sisters, and after marriage by their wife: that is, in return for the work on family property they had a right to food, clothing and luxuries only limited by the prior right of the women and children—unless, possibly, his family was poor, and he thought it best to seek a fortune in foreign lands before coming back to marry.

So far as the property of a man or woman was not acquired during marriage it was inherited by his or her *waris*, that is by his or her female blood relations on the maternal side. (Note: *waris betina* (female *waris*) means the *waris* of the woman, *waris jantan* (male *waris*) means the *waris* of the man.)

If a man had daughters the property went to them. A man could only very exceptionally leave property to his children; they could not inherit his property as a matter of course; and, as we have seen, he possessed no land which they could inherit.

A man had no rights over, or property in, his children; children were the property of the mother, and she alone had rights over them. On her death the rights and property in them were inherited by her mother and sisters.

At marriage the man came to live in his wife's house. Marriage was called *sĕmĕnda.* The wife's house and, by extension, she and her *waris* were called *tĕmpat sĕmĕnda.* The husband was the *orang sĕmĕnda.* As often as not the husband built her a new house on part of her mother's ancestral land, which was given her during her mother's lifetime. Marriage was monogamous.

The marriage system being exogamic the husband was (ignoring the few exceptions due to the exogamic unit being smaller than the tribe) always from a different tribe from that of his wife. Descent being through women, children were always of the same tribe as their mother. One of the main objections to the inheritance of property by the widow or children from the husband was the bar which existed between the two tribes.

A most remarkable feature closes this short sketch, namely, the fact that on marrying the man becomes absorbed for most purposes into the tribe of his wife. A married tribal chief is therefore very much of a hermaphrodite : *qua* married man he is a seconded member of his wife's tribe, but his office is in his own natal tribe.

§ 2. MENANGKABAU

The units are the *nĕgari,* each consisting of the forty or so tribes (*suku*) mixed in each of the villages. These forty tribes are derived from the original four tribes, grouped into two *laras* of two tribes each. To what extent Mĕnangkabau and Nĕgri Sĕmbilan tribes are identical, or in what manner the latter are derived from the former, I do not know. The villages are called *kota,* literally fort. Each tribe lives in a separate ward in each village, *kumpulan rumah,* literally " collection of houses ". The houses are large, each containing a *pĕrut,* a whole family with its four or five generations. Additions are made to houses to accommodate the growing population till a certain point is reached when the *pĕrut* sends off an offshoot. The senior *mamak* (uncle) in each *pĕrut* is the *tungganai panghulu rumah* or *tuwō rumah* (literally the old man of the house). The collection of *pĕruts* of common origin is a *kampong.* This term

presumably includes the houses of each of the *pĕruts*, thus each *kumpulan rumah* or ward in a village inhabited by one *suku* contains several *kampong* which in their turn contain *rumah*, each inhabited by a *pĕrut*. The head of the house, as I have said, is the *tuwō rumah*, the head of the *kampong* is the *penghulu kampong*. Wilken does not mention the title of the head of the *kumpulan rumah* (who is of course the head of the tribe), nor how the *kota*, the village, is governed. The head of each tribe in the *nĕgari* is the *pĕnghulu puchuk* or *puchuk*. The *nĕgari* is governed by a council of *puchuk*. Wilken makes no mention of an *undang*, head of a *nĕgari*, such as exists in Nĕgri Sĕmbilan. He expressly says that all the *suku* are equal. Thus the supremacy of one of the tribes in each of the Nĕgri Sĕmbilan is confirmed to be a recent development (depending on which tribe was the pioneer tribe in that district). On the subject of federations between different *nĕgari* he writes as follows: " Each state stands by itself. There is no bond of union binding together the various states of which a territory is composed. On the contrary, the relation between these small states is not always of the most peaceful kind and wars are frequent among them. Still, occasionally, there seems to be a desire for more cohesion. Constant wars have led, among some of these peoples, to the making of alliances between two or more states for the purpose of assisting one another in time of war. So we see, not as a general rule, but here and there, several districts or states joined together into confederate bodies. The most remarkable instance of this is furnished by the Padang Highlands. The *nĕgari* are united into federations, which federations, according to the total number of *kota* or villages comprised in the federated *nĕgari*, are respectively called Kota IV, VI, XII, XX, etc. These federated *nĕgari* are mutually bound to help and support one another on all possible occasions." These federations appear to be closely analogous to the Nĕgri Sĕmbilan of the peninsula, with the exception that no royal ruler of the federations is mentioned.

One further point to be kept in mind by any reader familiar with matriarchal conditions in India is that the whole popula-

tion is homogeneous : the matriarchal population in no way forming a separate stratum of the population, it *is* the whole population.

§ 3. THE BANTS OF CANARA

The matriarchal races in India are distinctly in the form of strata among other races or castes following other customs. This is less markedly the case among the Bants than among the Nayars.

"The name Bant, pronounced Bunt, means in Tulu a powerful man or soldier, and indicates that the Bants were originally a military class corresponding to the Nayars of Malabar. The term *Nādava* instead of Bant in the northern portions of South Canara points, among other indications, to a territorial organization by *nāds* similar to that described as prevailing in Malabar. 'The Nayars were, until the British occupied the country, the militia of the district. Originally they seem to have been organized in Six Hundreds, and each Six Hundred seems to have had assigned to it the protection of all the people in a *nād* or country. The *nād* was in turn split up into *tāras*. The *tāra* was the Nayar territorial unit for civil purposes.' 'The Nayar chieftain of old had his *nād* or barony, and his own military class ; and the relics of this powerful feudal system still survive in the names of some of the *tāluks* and in the official designations of certain Nayar families. . . . Correspondingly, the Bants of the northern parts of Canara still answer to the territorial name of Nād Bants, or warriors of the *nād* or territory. It is necessary to explain that, in both ancient Kerulam and Tulu, the functions of the great military and dominant classes were so distributed that only certain classes were bound to render military service to the ruling prince. The rest were lairds or squires, or gentlemen farmers, or the labourers and artisans of their particular community, though all of them cultivated a love of manly sports.'

"Few traces of any such organization as has been indicated now prevail, great changes having been made when the Vijayanagar Government introduced, more than 500 years ago, a

system of administration under which the local Jain chiefs, though owing allegiance to an overlord, became more independent in their relations with the people of the country. Under the Bednur kings, and still more under the Mysore rule, the power of the chiefs was swept away, but the old organization was not reverted to.

"The Bants are now the chief land-owning and cultivating class in South Canara, and are, with the exception of the Billavas or toddy drawers, the most numerous caste in the district. 'At the present day, the Bants of Canara are largely the independent and influential landed gentry, some would say, perhaps, the substantial yeomanry. They still retain their manly independence of character, their strong and well-developed physique, and they still carry their heads with the same haughty toss as their forefathers did in the stirring fighting days when, as an old proverb had it, "the slain rested in the yard of the slayer", and when every warrior constantly carried his sword and shield. Both men and women of the Bant community are among the comeliest of Asiatic races, the men having high foreheads and well-turned aquiline noses.' "[1]

The Bants follow the *Aliya Santana*, a very pure form of matriarchal law, under which the senior woman manages the joint family.

They are divided into exogamous sects named *bali*, the names of which are reminiscent of totemism.

§ 4. THE NAYARS OF MALABAR

The situation among the Nayars is extremely complex, but I think the books make it unnecessarily so by a flood of detail which hides the main lines and makes their discovery both difficult and uncertain.

The following attempt at simplification may contain mistakes, for which I apologize.

The Malabar Coast was before British rule a congeries of distinct countries, each with its own royal family. How many of these countries there were I do not know. The royal families

[1] *C. and T. of S.I.* Vol. II, article "Bants."

were almost undoubtedly Nayar (and therefore below the Brahmans, though the existing members claim to belong to a caste they call *Samantan*, above the Brahmans). These families were matriarchal joint families, in two important instances governed by the senior lady. These families had at least in several cases split into three or more joint families. The joint families were called *kōvilagams* (or in other cases *ēdam*). *Kōvilagam* was also the name of the palace in which the family lived.

Each royal family (in the larger sense of the word) had several lordships or *sthānams* attached, with definite relative seniority. Thus the royal family of Calicut with three *kōvilagams* had five dignities filled by males and one by a woman; the royal family of Palghat with eight *ēdams* (now subdivided into twenty-seven) had also five dignities. The highest dignity was that of the *Zamorin* himself, or King. This was filled by the oldest man irrespective of lineage, in the same way each of the succeeding dignities by the next oldest, so that at the death of any *sthāni* (lord) those below him each moved up one. The eldest lady of the house of Calicut, whichever *kōvilagam* she belonged to, occupied a particular dignity called *ambadi kōvilagam*. Each of the *sthānams* had a palace and a definite portion of the original joint family property separated off for the purpose of supporting the holder. From the moment of his appointment a *sthāni* ceased to have an interest in his *kōvilagam*. As Lewis Moore points out, this shows a beginning of the individualization of property.[1] At the *sthāni's* death his acquired property, unless he had indicated that it should merge in the *sthānam* property, reverted to his *kōvilagam*.

I do not know how far the following is only true of Palghat or characterizes all these royal families. Mr Warden wrote in 1801: "On the death of the 1st Rajah, the 2nd succeeds. . . . By this mode of succession, the eldest Rajah is very advanced in years before he succeeds to the seniority, in consequence of which it used to be customary to entrust the ministry of the country to one of the younger members of the

[1] *M.L.C.*, p. 340.

family chosen by the Rajah." [1] To what extent there was a system of ministers, and to what extent they were filled from the royal families and from the Nayars, I do not know.

The *sthānis* were given the title of joint ruler. Whether they actually formed a council with the Zamorin or were delegated by him to rule over provinces I again do not know, probably the former (though such things as provinces did exist—for instance, the senior lady of Kurumbranad had been given by the Zamorin thereof the whole country of Payyanād. But this Payyanād itself had six *sthānis*, so the gift was probably only a method of splitting up an unwieldy kingdom—and in this case the *sthānis* did rule jointly as a council).

The *sthānis* were themselves largely controlled by parliaments of Nayars. The members of these parliaments seem originally to have contained the manager of every *tarwād* (joint family) in the district—and these districts were composed of groups of 600.[2] These assemblies were called *kūttam*, and there was one *kūttam* of 600 karnavar to each district or *nād*. Now it is recorded with reference to the Payyanād, which we were discussing above, that in this country there were six *sthānis* who ruled under the raja, with the assistance, or subject to the control, of four *kūttams*. This is the point at which I am stuck, and it is an important one. Did each *kūttam* only deal with its own district or *nād*,[3] or did it join with the others in one vast assembly? I should be inclined to think the former. The importance of the point lies in its bearing on the amount of centralization of government, for it would appear

[1] *M.L.C.*, p. 342.

[2] It would appear that originally four families constituted a *tāra*, the smallest administrative unit, governed by an elder named *karanavan*. The *tāra* would correspond with the Mĕnangkabau *kumpulan rumah*. It is not absolutely clear whether the members of the parliament were the heads of the families (*tarwād*), or of the groups of families (*tāra*).

[3] Between the *nad* and the *tāra* there would appear to have been another unit, the *dēsam*. Mr N. Subramani Aiyar writes: "The Nayars have a distinct feudal organization and the division of their territories had an unmistakable reference to it. The territorial unit was the *dēsam*, presided over by a *Dāsavazi*. A number of *dēsams* adjoining one another constituted a *nādu*, which was under the jurisdiction of a chieftain called the *Nāduvazhi*. Above the *Nāduvazhis* was the *Rajah*, the highest suzerain in the country. In course of time, each *nādu* split itself up into a certain number of *tāras*, over the affairs of which a *karanavan* or elder presided. An assembly of these *karanavan* constituted the 600, an old socio-military organization of the Nayars in medieval times.

to me that the Nayars originally had an extraordinarily effective politico-social system.

To show the system in perspective I shall contrast it with the French and English medieval systems.

The old French system was thaf of decentralized government by a military caste. The Capetian kings had no authority over their greater vassals and in consequence the country was in a continuous state of chaos. The kings eventually won this authority by means, not of subordinating their vassals to themselves, but of removing from them all the authority they had ever possessed. Thereafter they ruled through a bureaucracy centralized in Paris. The aristocracy, having nothing wherewith to fill their time in the provinces, flocked to the capital and produced that fine flower of European civilization which will ever be associated with the name of Louis XIV, at the expense, however, of bringing about in the provinces all the evils of absentee landlordism.

England in some miraculous manner escaped both extremes. The vassals were subordinated to each other in their hierarchical order. The greater part of the time therefore the country remained in peace, and the common people were on the whole well looked after by the barons and squires who lived among them.

The Nayar system united what one might think were incompatible elements of these different systems. The heads of families of this military and governing caste were centralized in a body at headquarters. The major functions of government were centralized to a rather high degree. But these men's wives were the landlords and very effectively kept the economic and social machinery going while their husbands were at court. If they had only been monogamous 1,000 years ago as they are now as a socio-political system, theirs would have been hard to beat.

Comparing them further with Mohammedans in conquered countries, living with their women in a clique apart in the citadel on the tribute paid by the conquered people, having no relations with the people, not even administering justice, not in fact deigning to get to know the customs of vanquished

peoples who were not prepared to adopt Islām, the advantage was entirely with the Nayars.

As is characteristic of matriarchal peoples generally we meet with a most manly and robust independence among the Nayars. The head of the Tellicherry Factory wrote in his official diary in 1746: "These Nayres, being heads of the Calicut people, resemble the parliament, and do not obey the king's dictates in all things, but chastise his ministers when they do unwarrantable acts."[1] Thurston continues: "The *kūttam* answered many purposes when combined action on the part of the community was necessary. The Nayars assembled in their *kūttams* whenever hunting, or war, or arbitration, or what not was in hand, and this organization does not seem to have been confined to Malabar for the koot organization of the people of South Canara gave the British officers much trouble in 1832–33. In so far as Malabar was concerned the system seems to have remained in an efficient state down to the time of the British occupation."[2]

The unit of society was the *tarwād*, a joint family, owning property communally, tracing its descent in the female line, the affairs of the family originally being conducted by a female manager, in later times by a male manager (except in the case of some of the royal families which still at the present day have a female manager).

The exogamic unit at the present day is the *tarwād*. Probably it was also the original unit. Raman Nayar in his statement in Appendix XLII states that *gōtras* exist in Travancore, though they are in no way an exogamic unit. *Gōtras* are the exogamic unit under patriarchal Hindu custom: and I do not think they can possibly exist under matriarchal custom. They are the community worshipping a joint male ancestor. On the other hand in North Malabar there does exist an exogamic unit larger than the *tarwād*: the *kūlam*, perhaps corresponding to an original *tarwād*. They are reminiscent of the Malayan *suku*. These *kūlam* are grouped to form *sub-castes which are usually endogamous*. This endogamy within a sub-caste is a peculiar feature foreign to Canarese, Mĕnangkabau and Malay Penin-

[1] *C. and T. of S.I.*, Vol. V, p. 409. [2] *Ibid.*, p. 409.

sular matriarchal communities. Within at least considerable limits this classification by *kūlam* and sub-caste would appear to cut across territorial classification.

The following is an example. The description is of a portion of Kurumbranād known as Payyanād. It is said to have been given by a Raja of Kurumbranād to a certain *Ambādi Kōvilagam Tamburātti* (this long name is the *stānam* or title of the senior lady of the Zamorin Raja's family). In this tract or *nād* there were originally six *stānis* or chieftains, who ruled under the raja, with the assistance, or subject to the constitutional control of four assemblies of Nayars, called *Kūttams*. Each tract had its hereditary president. In this tract there are *seven groups of kūlams*. It should be noted that the civil organization goes from *kūttam* through the *tāra* to the *tarwād*, missing out the *kūlam*. The *kūlam* is apparently a cross classification.

The *tāra* as we have seen seems to correspond with the Mĕnangkabau *kumpulan rumah* (the word *tāra* is connected with the Telugu *teruvu*, which means a street). Now in Mĕnangkabau the members of a *kumpulan rumah* all belong to the same *suku*. If all members of a *tāra* belong to the same *kūlam* (as is probable) the *tāra* and the *kumpulan rumah* would be homologous.

CHAPTER II

COMPARATIVE STUDY OF UNDERLYING PRINCIPLES

§ 1. INTRODUCTORY

THIS book began as an attempt to establish facts about, and later to understand, the custom in the Malay Peninsula. Before beginning to elucidate the details of the custom in this area, round which the rest of the book centres, I propose to go deeper and inquire into the general principles underlying it. The method will be comparative. When comparing matriarchal custom in the Peninsula with that in Sumatra it is important to remember that the matriarchal population of the Peninsula migrated originally from those very parts of Sumatra, so that there is a very direct " blood relationship " between these forms of the custom.

In our study of the Sumatran custom we will find ourselves driven to introduce conceptions derived from Indian anthropology, in particular the Joint Family and the Village Community Systems. We shall draw parallels with matriarchal systems in India, and to understand certain elements of those matriarchal systems we shall even have to search for parallels in patriarchal society.

This process of drawing parallels may conceivably be a comparatively worthless pedantic exercise. There are, however, at least two possible theories on which Indian custom would have direct bearings on Malayan custom. The theme running through the huge though brilliant works of Sir Gordon Frazer, with their overwhelming evidence consisting of a vast mass of parallels drawn from every corner of the earth's surface, is that all over the world men's minds are similarly constituted and develop along parallel lines, so that by psychological necessity customs and institutions also develop

along essentially similar lines the whole world over. From this point of view the study of every phase of matriarchal custom in India cannot but have a direct bearing on that of matriarchal custom in Malaya. Likewise the study of the joint family in patriarchal communities is likely to have a direct bearing on that of the joint family in matriarchal communities.

The other theory is that there has been a direct diffusion of Hindu culture into the Malay Archipelago and that not only patriarchal but matriarchal culture has been thus diffused. Of the fact of abundant Hindu influence over the whole of a vast region including the Malay Archipelago on the south and Indo-China on the north there is abundant evidence. What has not been suggested before is that this influence comprised matriarchal elements. The fact that this has not been suggested is probably owing to even prominent workers in the latter field having no knowledge of Hindu matriarchal custom.

I do not however demand that my readers should embrace either theory. The day of dogmatism is past. It was in the year 1757 that Swedenborg said that he had seen inscribed over the portals of a temple in the spiritual world the sentence, "Now is it permitted to enter intellectually into the mysteries of faith." It has taken till the last fifteen years for similar freedom of thought to make itself manifest in the sphere of science. The self-confidence which enabled mid-Victorian Europe to make such stupendous strides and which was so soon overthrown in matters religious by young science lifting its head with arrogance as overweening as that ever possessed by doctors of theology is now abandoning science grown middle-aged. Now at last, rocking to and fro as one after another of the foundation stones of scientific belief has been blasted, has science attained that humility which she herself had imposed upon religion : there is certitude nowhere : the learned no longer possess a quasi-papal authority : their dicta are open to question.

§ 2. THE GENESIS OF MATRIARCHY

As a suitable introduction to our inquiry into fundamental principles and at the same time a good example of the dogmatism which is at last out of fashion, I cannot do better

than quote the article " Matriarchate " from the 1910 edition of the *Encyclopædia Britannica* : " Matriarchate (' rule of the mother '), a term used to express a supposed earliest and lowest form of family life, typical of primitive societies, in which the promiscuous relations of the sexes result in the child's father being unknown. In such communities the mother took precedence of the father in certain important respects, especially in line of descent and inheritance. Matriarchate is assumed on this theory to have been universal in prehistoric times. The prominent position then naturally assigned women did not, however, imply any personal power, since they were in the position of mere chattels : it simply constituted them the sole relatives of their children and the only centre of any such family life as existed. The custom of tracing descent through the female is still observed among certain savage tribes. In Fiji, father and son are not regarded as relatives. Among the Bechuanas the chieftainship passes to a brother, not to a son. In Senegal Loango, Congo and Guinea, relationship is traced through the female. Among the Tuareg Berbers a child takes rank, freeman's or slave's, from its mother."

The dogmatism, the absence of a breath of doubt about these generalizations is delightful. The argument is by no means closed on most of these points. It is for instance almost certain that primitive matriarchy in India was characterized by the considerable power of the " Great Mother " of each group. Under the *Alya Santana* law of the Canarese, which is certainly more primitive than the *Marumakkathayam* law of the Malayal is, the senior woman does in fact rule over all the affairs of the group.

It is perhaps splitting hairs to invite attention to the fact that in the 1926 edition of the *Encyclopædia Britannica*, Vol. 29, page 133d, it is stated " that there is not one single tribe where sexual license is found untrammelled, where anything approaching promiscuity obtains ",[1] for polyandry is also likely to lead

[1] *Malayan Sociology*, Intr., p. v : " The theory of an original state of primitive promiscuity in the relations of the sexes rests on very uncertain foundation : even in modern times, specially among uncivilized races, a wide licence of intercourse (particularly pre-nuptial) is constantly found side by side with the recognition of formal (even patriarchal) marriage and has often deceived superficial observers into the belief that intercourse was absolutely unregulated."

to the reckoning of relationship through women, unless however the husbands are brothers.

Now polyandry existed among the Nayars and the Bants within fairly recent times. From the quotations from travellers which I shall give a little later there was clearly a tendency to look upon it rather as untrammelled licence than as polyandry. And that tendency was carried on till fairly recent years. But I do not think that it can any longer be maintained. The following authoritative expressions of opinion by Mr. S. Sturrock, I.C.S., are very damaging to the theory of untrammelled licence. "The propriety of the common idea of the comparative immorality of the Tulu marriage customs seems either to be based on a misapprehension of the facts or to depend upon the assumption that the morality of a people is inseparably bound up with a conventional code which strives to preserve the chastity of one sex by the severest penalties while allowing the other utmost latitude in the formation of either legalized or illicit connections.[1] The laws of property and inheritance are also entirely independent of the marriage laws, and this fact together with the independence enjoyed by married women, has led English and Hindu Judges to decide that there is no marriage among the Tulu people. . . . The great mass of the people continue to follow the ancient marriage rules and lead domestic lives undisturbed by the fact that other people, with other ideas, consider that they are not married at all." [2]

This far from irregular and licentious polyandry developed into monogamy. How it happened I do not know. On arranging the following quotations from old travellers in chronological order, as I have here, it seemed to me that the change had been sudden, presumably in the course of the nineteenth century. I do not think it has been suggested before that Tipu Sultan's proclamation to the Nayars on the occasion of his visit to Calicut in 1788 may have initiated a movement of reform which led to the disappearance of polyandry: "And, since it is a practice with you for one woman

[1] *South Canara Manual*, Vol. I, p. 142.
[2] *Memorandum printed with the Report of the Malabar Marriage Commission.*

to associate with ten men, and you leave your mothers and sisters unconstrained in their obscene practices, and are thence all born in adultery, and are more shameless in your connections than the beasts of the field; I hereby require you to foresake these sinful practices, and live like the rest of mankind."

Now for the tales of the travellers:

Herman Lopez de Castanheda (1552): "By the laws of their country these Nayres cannot marry, so that no one has any certain or acknowledged son or father; all their children being born of mistresses, with each of whom three or four Nayres cohabit by agreement among themselves. Each one of this confraternity dwells a day in his turn with the joint mistress, counting from noon of one day to the same time of the next, after which he departs, and another comes for the like time. Thus they spend their time without the care or trouble of wives and children, yet maintain their mistresses well according to their rank. Any one may forsake his mistress at his pleasure; and in like manner, the mistress may refuse admittance to any one of her lovers when she pleases. These mistresses are all gentlewomen of the Nayre caste, and the Nayres besides being prohibited from marrying, must not attach themselves to any woman of a different rank. Considering that there are always several men attached to one woman, the Nayres never look upon any of the children born of their mistresses as belonging to them, however strong a resemblance may subsist, and all inheritances among the Nayres go to their brothers or the sons of their sisters, born of the same mothers, all relationship being counted only by female consanguinity and descent. This strange law prohibiting marriage was established that they might have neither wives nor children on whom to fix their love and attachment; and that being free from all family cares, they might more willingly devote themselves entirely to warlike service."

Cæsar Fredericke (1562): "These Nairs having their wives common amongst themselves, and when any of the Nayar goe into the house of any of these women, he leaveth his swords and target at the door, and the time that he is there, there dare not be any so hardie as to come into that house.

The king's children shall not inherite the kingdom after their father, because they hold this opinion, that perchance they were not begotten of the king their father, but of some other man, therefore they accept for their king one of the sonnes of the king's sisters, or of some other woman of the blood roiall, for that they be sure that they are of the blood roiall."

In his *New Account of the East Indies* (1727) Hamilton wrote : "The husbands", of whom he said, there might be twelve, but no more at one time, "agree very well, to their priority of marriage, ten days more or less according as they can fix a term among themselves, and he that cohabits with her maintains her in all things necessary for his time, so that she is plentifully provided for by a constant circulation. When the man that cohabits with her goes into her house he leaves his arms at the door, and none dare remove them or enter the house on pain of death. When she proves with child, she nominates its father, who takes care of his education after she has suckled it, and brought it to walk or speak, but the children are never heirs to their father's estate, but the father's sister's children are."

Grose, in the latter half of the eighteenth century, says : "It is among the Nairs that principally prevails the strange custom of one wife being common to a number ; in which point the great power of custom is seen from its rarely or never producing any jealousies or quarrels among the co-tenants of the same woman. Their number is not so much limited by any specific law as by a kind of tacit convention, it scarcely ever happening that it exceeds six or seven. The woman however is under no obligation to admit above a single attachment, though not less respected for using her privilege to its utmost extent. If one of the husbands happens to come to the house when she is employed with another, he knows that circumstance by certain signals left at the door that his turn is not come, and departs very resignedly."

In illustration of the custom of polyandry among the Nayars of Malabar in bygone days, the following extracts may be quoted :

"On the continent of India", it is recorded in Ellis' edition

of the Kural (nineteenth century), "Polyandry is still said to be practised in Orissa, and among particular tribes in other parts. In Malayalam, as is well known, the vision of Plato in his ideal republic is more completely realized, the women among the Nayars not being restricted to family or number, but after she has been consecrated by the usual rites before the nuptial fire, in which ceremony any indifferent person may officiate as the representative of her husband, being in her intercourse with the other sex only restrained by her inclinations; provided that the male with whom she associates be of an equal or superior tribe. But it must be stated, for the glory of the female character, that notwithstanding the latitude thus given to the Nayattis, and that they are thus left to the guidance of their own free will and the play of their own fancy (which in other countries has not always been found the most efficient check on the conduct of either sex), it rarely happens that they cohabit with more than one person at the same time. Whenever the existing connection is broken, whether from incompatibility of temper, disgust, caprice, or any of the thousand vexations by which from the frailty of nature domestic happiness is liable to be disturbed, the woman seeks another lover, the man another mistress. But it mostly happens that the bond of paternity is here, as elsewhere, too strong to be shaken off, and that the uninfluenced and uninterested union of love, when formed in youth, continues even in the decline of age." [1]

At the time of the Malabar Marriage Commission it was still clearer that monogamy was the rule and polyandry the exception, much restricted as to locality. "If by polyandry we mean a plurality of husbands publicly acknowledged by society and by each other and sharing between them a woman's favours by mutual agreement, the legal and regulated possession publicly acknowledged of one woman by several men who are all husbands by the same title, it may be truly said that no such custom is now recognized by the Marumakkathayam castes in Malabar. If by polyandry we simply mean a usage which permits a female to cohabit with a plurality of lovers

[1] All the above quotations are taken from *Castes and Tribes of Southern India*, Vol. V, pp. 307–11.

without loss of caste, social degradation or disgrace, then we apprehend that this usage is distinctly sanctioned by Marumakkathayam and that there are localities where and classes among whom this licence is still in practice." [1]

The following extract from Appendix XLIII leads to a suspicion that the travellers' tales I have quoted may have much exaggerated the polyandry which existed: "It is true that among a section of the Nayars this custom was prevalent. It was limited however to brothers born of one mother, who had been called to take up arms. A woman could have several husbands (born of one mother) provided all of them were soldiers. The brothers who had been allowed to remain at home and look after their private business had actually separate wives."

The origin of the matriarchal system is ascribed to polyandry. But *how did polyandry itself arise*? I quote two theories only to disprove them and to leave the question unanswered.

"It has been argued *that polyandry was introduced by the Brahmans* for their own selfish ends and that the *Kalyānam* ceremony which every Nayer girl performs before attaining puberty, but which have no relation whatever to the real marriage, indicates a period when marriage was as elsewhere in India, a religious institution. The *Kalyānam* ceremony was probably introduced by the Brahmans." [2]

The reference is to the *tāli-kattu-kalyānam* ceremony—meaning "the marriage by the tying of the thread". It should be noticed that all marriages under ordinary Hindu custom are performed by the husband tying a thread round the bride's neck—that the word *kalyānam* is the ordinary Tamilian (and hence presumably Malayalam) word for the true undissoluble marriage—and that the Nayar, matriarchal Tiyans, and the Tuluvans of Canara contract a looser tie dissoluble by either party (possibly originally only by the wife) which they call *sambandham*, a joining (a Sanskrit word from which presumably the Malay *sambong* is derived).

This *tali-kattu-kalyānam* resembles to an extraordinary

[1] *Malabar Laws and Customs*, p. 57. [2] *Ibid.*, p. 58.

degree the ceremony by which the *Dēvadāsis*, professional dancing girls and prostitutes of southern India, are dedicated to their profession (or by which the less degraded *Basivis* of Bellary district are initiated to theirs). At a certain stage the priest gives the *tāli* to the bridegroom and the family astrologer shouts "*Muhurtham*" (auspicious hour), and the bridegroom, putting his sword on the lap, ties the *tāli* round the girl's neck, who is then required to hold an arrow and a looking-glass in her hand. The boy and the girl are then carried by members of her *tarwad* to a decorated apartment in the inner part of the house, where they are required to remain under a sort of pollution for three days. On the fourth day they bathe in some neighbouring tank or river, holding each other's hands. After further ceremonies and a procession the girl serves food to the boy, and after taking their meals together from the same leaf, they proceed to the *pandal* (kiosk), where a cloth is severed into two parts and each part given to the groom and the bride separately. The severing of the cloth is supposed to constitute a divorce.[1]

Particularly as it is stated (by Mr Justice Muthusami Iyer, President of the Malabar Marriage Commission) that every girl must go through the ceremony before she reaches puberty, I take it that in modern times, unless a *sambandham* is to follow, a bridegroom is chosen who has himself not reached puberty, the ceremony serving purely as a mystical introduction to the marriageable state.[2] But it does not appear always to have been so, and usually, though subject to local variations, it was an adult Brahman who did in fact initiate the girl to sexual life.

[1] From Mr K. R. Krishna Menon's evidence before the Malabar Marriage Commission, quoted on page 70 of *Malabar Laws and Customs*.

[2] Compare de Castanheda (1551): "These sisters of the Zamorin and other kings of Malabar have had some allowances to live upon, and when any of them reaches the age of ten, their kindred send for a young man of the Nayar caste out of the kingdom and give him great presents to induce him to initiate the young virgin, after which he hangs a jewel round her neck which she wears all the rest of her life as a *token that she is now at liberty to dispose of herself to anyone she pleases as long as she lives* (Ker's *Voyages and Travels*, Vol. II, p. 35). It should be noted that whereas Castanheda says the Zamorin's *sisters* are initiated by a Nayar, Captain Hamilton says the Zamorin's *bride* is initiated by a Nambudri (*A New Account of the East-Indies*, by Captain Alexander Hamilton, Vol. I, pp. 310–1744). Is one of these accounts incorrect? or used there in fact to be the most important differences in the caste of the initiator in the two cases?

"It was stated before the Commission that in North Malabar the *tāli* was generally tied by an elderly Brahman, and as to this Mr (now Sir Henry) Winterbotham, one of the Commissioners, expresses the opinion that the Brahman *tāli*-tier was a relic of the time when the *Nambudris* [1] were entitled to the first-fruits and it was considered the high privilege of every Nayar maid to be introduced by them to womanhood. Without giving any opinion as to the correctness or otherwise of the view, I may draw attention to the following extract from Captain Alexander Hamilton's well-known book: 'When the Zamorin [2] marries he must not cohabit with his bride till the Nambudri or chief priest has enjoyed her and he, if he pleases, may have three nights of her company because the first-fruits of her nuptials must be a holy oblation to the god she worships. And some of the nobles are so complaisant as to allow the clergy the same tribute, but the common people cannot have that compliment paid to them but are forced to supply the priests' places themselves.'" [3]

Mr Lewis Moore, though prepared to agree that the ceremony of "*Tali-kattu-kalyānam*" is purely of Brahminical origin, does not admit that polyandry was thereby introduced among the Nayars.

The relationship between Nambudri men and Nayar women is however very much more far-reaching. The relationship between the two castes is a strange one and must surely be unique. Only the eldest male of a Nambudri family may contract a marriage. The marriage is of course with a Nambudri woman.[4] The younger brothers are all prohibited from

[1] The holiest caste of Brahmans in Malabar.

[2] The King.

[3] *Malabar Laws and Customs*, p. 70. But see para. 4 of Appendix XLIII.

[4] I am not clear as to whether or not there is polygamy. From the following quotation it would appear not. Thurston writes: "The arrangement is an excellent one for the material property of the family, for there is no dispersion. Every circumstance tends towards aggrandisement, and *the family is restricted from increasing to more than the requisite number by one member only marrying, and producing children.* Impartibility is the fundamental principle." *Castes and Tribes of Southern India*, Vol. V, p. 176. If only one man in each family can marry and he is monogamous, are the majority of Nambudri ladies condemned to perpetual chastity? (For among the sixty-four *anacharas* promulgated by Sankaracharya is the following: "44. Brahman women must not look at any other men besides their husbands" (*Ibid.* Vol. V, p. 188).

contracting a "legal" marriage but may contract *sambandhams* with Nayar women.[1]

What presumably is the *raison d'être* of this custom is most complicated. Their system of law is a strange blend between the matriarchal joint family of the Nayars and the patriarchal system of inheritance characteristic of ordinary Hinduism. Like the Nayars the family unit is the *tarwad* defined by matriarchal descent. Also like the Nayars this joint family unit is impartible. Yet property descends from father to son. The solution of this conundrum is that as all the brothers but the eldest contract unions with Nayar women who are strictly matriarchal in their customs, and as these unions are practically illicit from the point of view of the Nambudris themselves, the children of these unions are Nayars and are in no way related to their Nambudri fathers. The self-acquired property of these younger brothers lapses to their *tarwad* at their death. As only one brother can marry (unless the eldest dies without male issue) the joint family is in fact impartible.[2]

Any man whose experience had been confined to Malabar would be pardoned for coming to what would seem the obvious conclusion, that the Nambudris had introduced polyandry among the Nayars. There is first the initiation of Nayar girls to sexual life by Nambudri men, then the right of Nambudri men to cohabit with Nayar women, even though they be already married to Nayar men.

On what Lewis Moore admits is scanty and unsatisfactory evidence he refuses to accept this theory.[3] But I think that by going outside Malabar conclusive evidence can be collected in support of Lewis Moore's rejection of the theory. The *Bants*, a caste in South Canara speaking the Tulu language, following the *Ālya Santāna* custom, an even purer form of matriarchal custom than the *Marumakkathayam* custom of the Nayars, and originally filling the same military function in

[1] *M.L.C.*, p. 20.

[2] Thurston is not clear on one essential point: Does a Nambudri man's son by a Nambudri wife belong to his own or to his wife's *tarwad*? He says, "women join the family of their husband, and to this too the children belong," but then he says, "the *tarwad* is the unit, and as the senior male succeeds to the management, it may happen that a man's sons do not succeed directly as his heirs" (*C. and T. of S. I.*, Vol. V, p. 176).

[3] *Malabar Laws and Customs*, p. 68.

the body politic, appear never to have had any systems corresponding to the *tāli-kattu-kalyānam*, nor to the illicit unions between Brahman men and their own women folk.[1] Yet polyandry continued to flourish among them till quite recent years, and, as I have already said, an even purer form of matriarchy exists among them. The only conclusion to be drawn is that the peculiar symbiotic tie between Nayars and Nambudris is purely adventitious, and has been the cause neither of the polyandry nor of the matriarchal customs which have characterized the Nayars.

Yet another theory of the origin of both polyandry and matriarchal custom has been based on the original military function of both Nayars and Bants. "All the Bants follow this *aliya santāna* system of inheritance, a survival of the time when the military followers of conquering invaders or local chiefs married women of the local land-owning classes, and the most important male members of the family were usually absent in camp or at court, while the women remained at the family house on the estate and managed the farms."[2] I would refer you to the quotation from Castanheda which I have already given ending, "This strange law prohibiting marriage was established that they might have neither wives nor children on whom to fix their love and attachment; and that, being free from all family cares, they might more willingly devote themselves entirely to warlike service."

Again from *Malabar Laws and Customs*:

"Another theory that has been propounded as to the origin of polyandry among the Nayars is that they were not polyandrous when they first entered Malabar but deliberately adopted that custom as being one well suited to their military habits" (p. 62).

"Mr Warden, who was Collector of Malabar from 1804 to 1816, in a report written by him to the Board of Revenue in

[1] *Manual of South Canara*, Vol. I, p. 142. "There is nothing in South Canara analogous to the advantage said to have been taken of old polyandrous habits in parts of Malabar by certain classes of Brahmans, who, in their relations with Sudra women, are believed to have abused their reputation for superior sanctity."

[2] See G. Krishna Rao, *Treatise on Aliya santāna Law and Usage*, Mangalore, 1898 (quoted from *C. and T. of S. I.*, Vol. I, p. 152).

1815, gives the same explanation of the origin of polyandry and the Marumakkathayam system of inheritance in Malabar as Montaigne and de Castenheda. He writes as follows:

'It would appear that the Government of the Malabar Rajahs were purely military. Their profession was arms and they had only their arms to rely on for their independence. The Nayars founded the military order in the State and held also the different offices of administration which it may be supposed were generally distributed among those whom advanced age or other infirmities rendered unfit for active service. Their military constitution . . . may have given rise to the singular custom of inheritance which obtains among the Nayars. *The profession of arms by birth*, subjecting the males of a whole race to military service from the earliest youth to the decline of manhood, *was a system of polity utterly incompatible with the existence among them of the marriage state.* Without matrimony the existence of the common Hindu laws of inheritance was equally incompatible. Such, I apprehend, was the condition of the Nayars under their ancient Government, from which condition originated their custom of inheritance through the female line, without reference to the paternal parent, a custom that has afforded matter for much speculative opinion. It is obvious from the nature of their professional duties that *their sexual intercourse could only have been fugitive and promiscuous* and that their progeny could never under such circumstances have depended on them for support.' "[1]

I shall return shortly to a discussion of the theories which I have italicized above, and continue with another aspect of this military theory, put forward by Mr Lewis Moore:

" The idea that the family system of the Nayars may be particularly due to their military organization is not so fanciful as might at first be imagined. *They lived in isolated houses which it is shown were in reality small forts.* Dwelling in this manner, and not in villages as is the universal custom among Hindus on the east coast, they would feel it a matter of vital importance to keep the members of the *tarwad* together. Family feeling is stronger among women than men. The

[1] *Malabar Laws and Customs*, pp. 64, 65.

Nayar men must have felt that their sisters, if kept as permanent residents in the family house, were certain to remain stanch and loyal members of their *tarwad* and also to bring up their children as such. It was far safer, they must have thought, to keep their sisters in the *tarwad* than to bring in as wives strange women from distant, and even perhaps hostile, families, who would in all probability never become loyal members of their new homes." [1]

This all sounds very nice, but in the first place *has it been shown* that these isolated houses were in reality small forts? He gives no authority for this statement. Does he base the theory on the following statement by Ibn Batuta (who visited this district in 1342–7: "Everybody here has a garden and this house is placed in the middle of it and round the whole of this there is a fence of wood up to which the ground of each inhabitant comes"—a description which Mr Logan in his *Malabar Manual* [2] says is literally true of Malabar to-day? If Mr Moore does take these wooden fences to correspond to the palisades of a fort they are a peculiar form of fort, for, as Ibn Batuta says, the fences are usually *joint boundaries.* The whole of the orchard as opposed to the rice lands would consist of *a honeycomb of contiguous forts*! I have done a little wandering about in Malabar, without, it is true, this idea in mind; but I can remember having seen nothing which would lead one to interpret these compounds as forts.[3] Has not the contrasts between the two types, the "village" and the "homestead," rather overpowered Mr Moore and other India observers? After all, these *tarwad* houses in the middle of

[1] *M.L.C.*, pp. 67, 68. [2] Logan's *Malabar Manual*, Vol. I, p. 289.

[3] I have to admit the following statement by Mr Subramani Ayer as against my point of view: "The houses of the Nayar, standing in a separate compound, have been by many writers supposed to have been designed with special reference to the requirements of offence and defence. . . . The garden surrounding the house is surrounded by a hedge or strong fence. At the entrance is an outhouse, which must have served as a kind of guard-room in mediæval times. In poorer houses its place is taken by a roofed door generally provided with a stile to keep out cattle."

On the other hand, Mr K. T. Pillai's statement in Appendix XLIII supports my view: "It is not true that all Nair families were protected by a fort. Forts only existed round the village of a big lord or a rajah. The big fencing of wood, stone and mud, and the grand entrances at the frontage symbolized only the pomp and power of the family. And the fencing was not meant for protection from the attack of enemies. But it should be remembered that there were very many lords and rajahs in ancient days."

their own compound are strictly paralleled by the Indonesian *kampong* system. It is significant that the Anglo-Indian word *compound* is derived from the Malay *kampong*. Now the Malayan *kampong*, particularly I think in Negri-Sembilan, is usually surrounded with a wooden fence, but the object of the fence is very definitely not to exclude human beings, but *animals*, in particular other people's tame buffaloes. Moreover, in order to establish Mr Moore's argument evidence would have to be produced that there was a strong tendency both for the village system to be patriarchal (or at least parental) and the homestead system matriarchal. Take the Bataks of Sumatra for instance: they are patriarchal and they have a village system, but they were at one time matriarchal; did they originally follow the homestead system and did a change to the village system evidence a change from matriarchy to patriarchy? I have met no hint of any such change. Take the Mĕnangkabau Malays themselves. They follow the matriarchal system, but they live in villages!

The psychological part of Moore's argument is surely almost too weak to require criticism. Has any fundamental change in the sociological structure of a primitive community been brought about by conscious reasoning such as that their homes would be safer in the hands of their sisters than in those of their wives, and that therefore it would be wise, instead of as heretofore sharing a house with their wife, to share it with their sisters? It is surely unthinkable.

Rather than to incline me to the belief that each *tarwad* was a military focus (even for defensive war) the evidence inclines me to the belief that the *tarwad* was a focus of peace: that the military organization of the Nayars was directed towards external enemies, while within the country itself reigned an unusual degree of peace. The fact should not be overlooked that whereas the head of each *tarwad* is nowadays a man, in the early days, when the military organization was a much more real thing, the head of each *tarwad* was a woman, and women had no military training!

To return to Mr Warden's argument that the profession of arms by birth was a system of polity utterly incompatible

with the existence among them of the married state, and that their sexual intercourse could only have been fugitive and promiscuous: was not Mr Warden during his reading for Greats at Oxford too much swayed by the theoretical structure in Plato's *Republic*? Is his supposition compatible with what is known of the mental make-up of man? Does not H. G. Wells somewhere in *Mr Clissold Sees the World* analyse sexual relationship into three types, one of which characterizes that portion of human society including soldiers, sailors and such-like, in which the man is absent from home much of his time, and in which the predominant element is the jealousy of the man? Above companionship, help in their joint activities and all other virtues of his wife, does the man not value her chastity during his absence, his sole possession of her? I admit that one is moving here in a world of conjecture, but I am personally prepared to back Mr Wells. If the Nayars had invaded Malabar while still following patriarchal custom would the men not, when they went to live at headquarters, have taken their women with them, as the French aristocracy did when the kings of France eliminated their feudal duties and they came to live in Paris? Have not Mohammedan conquerors, who lived always as a military clique at the headquarters of a conquered domain, always kept their women with them?

The military theory of the origin of matriarchy is quite untenable. Polyandry would appear to have been a condition characterizing early matriarchy. But was it merely a concomitant or was it an active cause?

Polyandry is claimed as a cause of matriarchy on the grounds that, fatherhood being uncertain, the family must be based on motherhood. A closely allied theory has been put forward by Malinowski, evolved in the course of his work among the Trobrianders of New Guinea, namely, that matriarchy has originated in the *ignorance of the fact of physiological fatherhood.* A summary of his views, more fully developed elsewhere, will be found in his book *The Father in Primitive Psychology.* It seems impossible to disbelieve the most astounding fact that the Trobrianders do not know, and almost passionately oppose

the suggestion, that sexual intercourse between men and women has anything to do with the pregnancy of women. They know that a virgin cannot conceive; but believe that mechanical means can be as effective as penetration by a man's penis, and allow to the seminal fluid only the function of lubrication.

It must be admitted that if this ignorance of fatherhood were proved to be historically an early stage of primitive communities, and as such at all widely distributed, it would be a sufficient explanation of the origin of matriarchy—at least of matriliny.

But are the Trobrianders a truly primitive community? In some ways they are quite advanced. They have a knowledge of anatomy which is surprising, and economically are certainly not in the lowest stages of development. If there is anything in the argument developed in the later chapters of this book as to the lines of evolution and decay of matriarchy, it follows that the Trobriander type of matriarchy is far from primitive. Strongly against my early inclination (based on a study of Rembau Malays) I have had to admit that primitive matriarchy was communal. Among the Trobrianders it is largely individual. In primitive matriarchy property is only owned by women. Among the Trobrianders it is apparently largely owned by men. I have shown that in primitive matriarchy there is no room for the *adat kamanakan*, the inheritance of property from one's uncle, which is in fact a symptom of advanced decay of the custom. The *adat kamanakan* is one of the most marked characteristics of Trobriand society. In primitive matriarchal society man and wife live separately each in their matriarchal home. A later development is for the man to live in his wife's house. Among the Trobrianders the wife goes to live in her husband's home. Early matriarchal marriage is polyandrous; monogamy is a later development. The Trobrianders are monogamous. In primitive matriarchy the eldest woman manages the family and its property—among the Trobrianders the eldest man. In fact from my point of view the Trobriand system is in such an advanced state of decay that it is on the verge of swinging

over into patriarchy; it is only matriliny that holds it back. To my mind it is precisely in this critical position of matriliny that is likely to be found an explanation of the surprising ignorance of the fact of paternity.

Before tackling this point, however, I should like to draw attention to the peculiar postulate, which in spite of being so general seems to attract so little attention, that savage communities are necessarily primitive. Surely this postulate depends on a play on two distinct meanings of the word "primitive"? There has been a tendency in the last half-century, particularly strong I think in Germany, to postulate that every change was progressive, no change regressive. Some of the results have been amusing. Every idea is necessarily better than previous ideas on the same subject. The tendency shows itself even in philosophy for it to be unnecessary to disprove an old idea, it is sufficient that it should be *demodée*. If a theory like socialism spreads, the fact of its spreading is sufficient proof both of the correctness of the theory and of the inevitability of its practice becoming universal. One can always argue that there has been advance—no community can have degenerated.

But what about the lessons of biology? Consider a very large order of plants: the fungi. They are physiologically very primitive in being saprophytes (livers on dead organic matter) and parasites. Their mode of reproduction is in general extremely low, being by budding and the building of spores—rarely sexual. This is an important point, as the nature of the reproductive process is taken to be the most fundamental characteristic of the different varieties of plants, and it is on the characters of the reproductive organs that classification is almost exclusively based. Yet, and here is the crucial fact, the few traces of sexual reproduction one finds among the fungi lead to the supposition that this whole order is a degenerated offshoot from the Rhodophyceæ, the Red Algæ, an order with an intensely complex sexual reproductive system, an order which forms a sort of evolutionary peak as the insects do in the animal world. Absolutely wholesale degeneration has taken place. Why is

the possibility of a similar phenomenon never mentioned in anthropology ?

It is surely possible that some degree of degeneration should have taken place among the Trobrianders. May not ignorance of physiological paternity rank among other secondary characters ? I have to admit a serious difficulty : the disappearance of a type of knowledge like the fact of paternity does not prima facie seem in the least likely. I have to invoke some rather advanced psychology to support my line of argument. I have to call upon McDougall's theory of the Group Mind and upon psycho-analysis. Two phenomena are known commonly to occur in the individual human mind, " rationalization " and the obstinate disappearance of memories connected with a repressed complex. I suggest that there was at one time knowledge of the fact of physiological fatherhood, at a time when matriarchy was in full swing, that later matriarchy began to decay, and that the conservative elements of the community (forming the greater part of it) developed a fear of the disappearance of matriarchy, a fear so unpleasant to contemplate that unreasoningly they crushed it. They felt the need of explaining to themselves the necessity of matriliny, and, their subconscious conveniently did two things to help, forgot about fatherhood and " rationalized " matriliny by suggesting that there was no such thing as fatherhood.

This may sound very far fetched. But this type of thing is believed by psychoanalysts to happen every day to individuals ; in my own personal experience I have unearthed instances both of repressed memories and of rationalization. My suggestion is only original in that I bring in McDougall's theory of the Group Mind, and suggest that in a society in which the majority of the individuals were suffering from a repressed complex the whole community might behave as an individual. The repressed complex and the rationalization would become a part of the " social heritage " of the community. The women of the community would provide what conscious fodder might be needed for the realization of the process in the first instance and its maintenance thereafter. I can scarcely believe that the women did not have their

tongue in their cheek when they encouraged their menfolk to believe some of the things the latter told Malinowski ; that no man had ever had connection with the difformed woman Tilapo'i, that Layseta's wife had been uniformly chaste during his long absence—and so forth. To my mind the almost passionate refusal of the men to see reason about the breeding of animals and the fact of heredity showing itself in facial resemblances argues most strongly a repressed complex.[1]

With the recent publication of Briffault's monumental work *The Mothers*, the question has come to the fore whether it was not rather religion than ignorance of paternity which was the fundamental factor. I quote from W. S. Perry's review in the *Journal of Philosophical Studies*, July 1928 : " Mr Briffault has once more reminded us that after all, culture must be treated as a whole. It is not possible to style oneself a sociologist, to study marriage systems, and to ignore the religious aspect, the mother goddesses who were so widespread in ancient belief. He who does so confine himself is apt to fall into serious error. For, after all, who can say that we know the origin of mother-right ? That being so we cannot afford to let any aspect of early society out of our minds. In thinking of matrilineal descent we must bear in mind, for instance, the feminine figurines of the upper Palæolithic, the protecting mother goddess of Upper and Lower Egypt, the goddess mother and nurse of the Egyptian king. For it is quite possible that matrilineal descent may ultimately mean descent from the Great Mother. It may, or may not, have something to do with the ignorance of paternity. But the day is yet distant on which we may say that the problem is solved."

The immediate result of this new point of view is to throw a little doubt upon the hypothesis which was beginning to obtain universal credence that matriarchy had all over the globe preceded patriarchy. On the current theories of evolution early human society must have been characterized by uncertain paternity. And if uncertain paternity brought about matriarchy, matriarchy must have been the primitive con-

[1] So does their theory about the function of the seminal fluid.

dition. There is no similar *a priori* necessity for a universal belief in the Great Mother of the Gods, or, even if the belief was universal, for its having universally produced matriarchy.

There is yet another, an economic, theory for the origin of matriarchy. I quote from C. O. Blagden's introduction to his translation of the collection of essays by Dr G. A. Wilken published under the name *Malayan Sociology*:

" It seems to me that a more or less settled or sedentary existence is required as an implicit foundation for a really definite system of exogamy, whether matriarchal or patriarchal. Each seems to involve in principle the transference of one of the spouses into an environment in which he or she is an alien and therefore more or less a subordinate person.

" But the necessity of perpetually wandering in very small parties over large tracts of country, which is a permanent condition of the modes of life of such primitive nomads as subsist on the products of the chase and the fruits and the roots they manage to gather in the forest (e.g. the negritos of the Malay Peninsula), might very well prevent any real aggregation of the family into the tribe and thus practically check the development of any higher social framework. There would be no question of a man going to live in the house, family or tribe of his wife, or vice versa, for the simple reason that in such a rudimentary stage of existence there are no houses, nothing but hastily made leaf-shelters that are used only for two or three nights and then are abandoned in the search for fresh hunting grounds. Consequently the whole substratum of a strict system either by matriarchy or patriarchy is wanting. Under such circumstances one would expect to find a constitution of the family more akin to our own parental system, and I believe that that is pretty much what is found among some of the most primitive races. When however the beginnings of culture tended to produce an approach to a more settled condition (even if for relatively short periods, just enough for the growth and harvesting of the crop), this state of things would gradually be modified. Now of the two sexes women would be the first to adopt a more sedentary life, both for physical reasons (as being constitutionally, especially at

particular periods, less adapted to the nomad life than the men) and also on economic grounds, because a good deal of the planting, harvesting, and such rudimentary housekeeping as there was, would most naturally fall to their share, while the men continued to spend the greater part of their time and energies in hunting animals and gathering fruits and roots to supplement the products of their little patch of cultivated land. Obviously this stage of development contains in itself the germ from which a matriarchal system might naturally evolve: it would only be necessary for the mothers (again, perhaps mainly for utilitarian reasons) to induce their daughters to remain in the paternal home and encourage the men who came from elsewhere to mate with them to lend a hand in keeping the establishment going. If they succeeded in doing that matriarchy, as a formal system, would be in a fair way of being inaugurated.

" Matriarchy may therefore owe its origin in part to economic causes; and if there is anything in the above suggested line of evolution, it must (where such conditions prevailed) have been a very early, though not necessarily the earliest stage in the development of the family. That it was also a very widespread stage has been abundantly proved: there are traces of it underlying patriarchy, in almost every region of the globe."

It may be objected that the big communal houses presupposed by such a theory cannot have been a primitive feature because of the greater difficulty of building a big than a small house. It is not, however, the case that a large house need originally have presented any great difficulty. Precisely among the aborigines of Malaya, the Sakais, there are the two types, those with the small house or shelters and those with the communal " long house ". The difficulties have been avoided by " expansion " in one direction only. Moreover, even allowing that the small house may have preceded the long house, it by no means follows that in the small house the husband lived with his mother's family. On an *a priori* line of argument one can presume that evolution followed a line parallel to that sketched by Mayne of the development of the patriarchal family into the patriarchal joint family. It would have started with the matriarchal family, comprised of the mother with her children, the mother being owner and ruler, both sons and daughters her vassals and her property: they would have lived in comparatively small houses. Only by the con-

tinuance of the tie after the death of the mother would the matriarchal joint family have arisen, requiring a large communal house. In neither case would husbands have gone to live with their wives.

Blagden appears to me here to be taking as the norm the type of matriarchy to which he was accustomed, that in the Malay Peninsula. As I shall show later, in what is for us at this moment the crucial point, peninsular matriarchy is not only not the norm, but has evolved away from the norm. Blagden appears to take for granted the tendency of the married man to be attached to his wife's family. This is, however, a peculiar feature of the peninsular custom. According to the Mĕnangkabau custom in the Padang Highlands in Sumatra, from which the peninsular custom is derived, there is none of this seconding of the man to his wife's tribe, and his leaving his mother's house to live in his wife's. He continues to live with his mother in a large communal house and remains in every sense a member of his mother's family and tribe. Moreover, these big communal houses, which also occur in Malabar, would appear to be characteristic of an earlier phase of matriarchy, small individual houses of a later phase.

It is just possible, however, that the matriarchal family itself developed from a parental family, not by a process of attraction of males from other units, but by the exaltation of women due to their preponderant rôle in the house when permanent settlement began to take place. In the process of "anchoring", the fundamental phenomenon at the dawn of civilization, women must have led the way in the manner and owing to the causes described by Blagden. As pioneers and as organizers of the new life they attained supremacy.

Proof in any way decisive as between these various theories is at the present day quite out of the question. Conjectures are however allowable. I would suggest that the deduction from the last theory that the original form of human society was parental was probably correct, matriarchal and patriarchal society being secondary developments. I am inclined, however, to think that the theory that the slightly greater anchoring of women in the semi-nomadic stage, at the beginnings of agriculture, *directly brought about* matriarchy is a trifle far-fetched : though I would concede that these conditions must have provided a favourable field for the growth of matriarchy. There would moreover be considerable variation in the favourableness of this economic factor according to the type of life. The process of settling of the Sakai in the dense forests of Malaya, devoid as he is of any domesticated animals except perhaps of the dog, must in a multitude of ways be different

from the process of settling of the races of the steppe countries with their flocks and herds. As the real cause, operating with greater ease in this favourable field, the religious beliefs and customs centring about the *Great Mother of the Gods* must almost certainly be conceded paramount importance. I would furthermore throw out the suggestion that given an exaltation of women resting on a barbaric religious basis, even without counting on the feminine tendency to secure and hold a circle of admirers, a favourable atmosphere would be created for the development of polyandry. This theory, while conceding the point to the old theory that polyandry and matriarchy might always be connected, would see in polyandry the effect rather than the cause.

The above argument is little more than an application of William James' pragmatic theory: before endeavouring to decide between two apparently opposed theories to see whether they do not both contain vital elements of truth. In this case I have taken not two but three apparently incompatible liquors, shaken them up in a cocktail shaker and produced the above result, which to myself at least is eminently palatable. In view of the above argument it becomes possible to revive Mayne's claim that the primitive Aryan society of India had no matriarchal phase. The fact that they were pastoral rather than agricultural semi-nomads would, following my line of argument, raise a presumption against their having been a favourable field for the growth of matriarchy.

It is of interest also to trace the development of Wilken's views on the primitiveness of matriarchal conditions. At first he took it almost for granted that they were primitive. Later he introduced slight qualifications: in certain cases he said they were secondary derivations from patriarchal conditions. He argued that the precedence of the male in descent and inheritance in patriarchal society followed entirely from the *authority* of the husband over the wife and that this authority was entirely dependent on the purchase of the bride. Provided the bride-price was paid, the husband was dominant in all respects. But if the bride-price was not paid, as in the following examples, it was the wife who was dominant. In the case of marriages between slaves and freemen the principle *partus sequitur ventrem* (or *partus sequitur matrem*) was merely a secondary phenomenon due to kinship being based on authority. A male slave is not in many

communities permitted to pay the bride-price for, and thus obtain authority over, his free bride, and therefore obtains no authority over his progeny. He also describes the phenomenon of a daughter in a patriarchal community carrying on the family in the absence of sons. In such cases the husband is not permitted to pay the bride-price, in order apparently that the woman should be dominant and thus carry on the family. In Malaya he describes instances of the husband being almost a slave in the house of the wife's family so long as he is unable to pay the bride-price; conditions being reversed as soon as he pays: a most rapid alternation between matriarchal and patriarchal conditions.

These arguments of Wilken's place me in a peculiar position. I have argued against the necessity of supposing matriarchy to be the primitive condition and I quote Wilken himself as a half-hearted convert to that point of view. Yet I cannot endorse his line of argument.

Wilken appears to me to miss a most important point inherent in his argument, namely that this secondary matriarchy which he describes implies a primitive stratum of matriarchy below the prevalent condition of patriarchy. For it is to be observed that in the particular patriarchal societies which he describes *unless a certain positive condition is fulfilled*, namely the payment of the bride-price, not only is the basis of the authority of man over wife absent but the wife is actually dominant: moreover, *the wife is dominant without her having to fulfil any positive condition*, merely by the default of the husband. No other conclusion is possible but that in those societies matriarchy was the original condition, and that a change to patriarchy occurred associated with the purchase of authority over the wife, that purchase remaining an absolutely essential condition of the new custom, its omission for any reason whatsoever determining the reappearance of the almost completely buried original custom. In other words, Wilken was wrong in arguing that because matriarchy only appeared under peculiar circumstances it was a secondary phenomenon. This rare appearance of matriarchy was in reality a reappearance conditioned by the very mode of appearance of the patriarchy which had almost completely overlaid it.

The following is a précis of Wilken's argument contained in the appendix to the second essay, Wilken, pages 103–13. He refers to his earlier essay, published five years earlier, in which he instanced as one of the relics of matriarchy among the Bataks the rule which obtains in their law of slavery, that the children always follow the status of the mother. "As I remarked, 'to appreciate the importance of this rule, we must remember that it is not a question of lawless cohabitation or concubinage, but of regular connubium'. Further investigation has shown me that what seemed such a direct relic of matriarchy may be entirely explained by the rules of patriarchy. . . . It may certainly be said in general that in mixed marriages the *status of the child* is determined by the *prevailing system of kinship*." In support of this he gives a number of cases under a matriarchal system. He

quotes Herodotus on the Lycians, mentions the Berbers of northern Africa, the Negro peoples of western Africa, the Kisar in the Malay Archipelago. "The rule then is that under matriarchy, in mixed marriages the child follows the status of the mother. Now what do we find under patriarchy? *A priori* one would say that the status of the child should here be governed by that of the father. However, this is not unconditionally the case. It will be remembered that agnatic or patriarchal kinship is based on authority: the child belongs to the man, who is lord over his wife. If, when marrying, a man has acquired authority, the 'manus' or 'mundium', over his wife, then the children are his; but if on the contrary the wife has remarried '*in patria potestate*', then he has no authority over his children and they belong to the mother's family. This also applies to the peoples of the Malay Archipelago. The way in which a man there acquires authority over his wife, is by paying the bride-price." He cites the *Watubela* Islands wherein there are three classes of people: the nobility, commoners and slaves. A noble wife married to a commoner husband can, by contracting a marriage without bride-price, raise the child to her status, which consequently is very often done. A similar rule is found in *Ceram*, *Ceram Laut* and *Buru*: *only if the bride-price is paid does the child there belong to the status of the father.* He returns to a consideration of the *Bataks.* "A female slave may never be taken by the master as a concubine (except in the case of a chief) . . . no one is allowed to marry his female slave unless she be set free at the same time." The argument presumably is that in the case of marriage of a freeman with his own slave woman, it is only an appearance that the father's status is followed by the children, for in fact at marriage the slave woman ceases to be such, and it is not a mixed marriage. In the case of a freeman marrying another man's slave woman, one of two things may happen. "The owner of the slave woman may demand a bride-price for her, which then counts as redemption money for the woman, who thus becomes free, while the children also are free and belong to the father. If no bride-price is paid, the slave woman naturally remains in her master's possession, while the children, following the status of the mother and consequently being slaves, also belong to him."

The marriage of a *slave* and a free woman always takes place without bride-price [contrary to what one would expect on the obvious line of argument that if a man of her own class had to pay so much to buy a woman, a man of a lower class would have to pay much more. G. de M.]. "And this is quite the nature of the case, as the paying of the bride-price involves authority and a slave cannot have authority over a free woman. The owner who pays the bride-price for his slave, the guardian of the free woman who demands the payment and the raja who recognizes it, are even liable to punishment. The crime is on a par with murder."

It is not improbable that among other peoples who have patriarchal kinship, and among whom the principle "*partus*

sequitur matrem" obtains, this must be explained by the fact that such marriages are always concluded without bride-price, that is without "*manus*." So for instance among the *ancient Romans*. The part of the argument about bride-price is contained in a note: "originally at any rate the 'manus' was obtained by *confarreatio* or by *coemptio*. The *confarreatio* was the patrician holy or sacred marriage, the *coemptio* the secular form, of which primitively the plebeians availed themselves. This latter form is based on the right of the father to sell his children. The old Roman form of sale, *mancipatio*, was used . . . the bridegroom was the purchaser, and bought the bride from her father or guardian by touching the scales with a piece of money. Only persons who had the '*connubium*' could contract a '*matrimonium justum*' that is to say a marriage with '*in manum conventio*'. Only in marriages between persons who had the '*connubium*' did the children follow the status of the father; when no *connubium* existed, in mixed marriages, the rule '*partus sequitur matrem*' obtained. Consequently in an alliance between a '*civis Romanus*' and a '*peregrina*' the child was a '*peregrinus*'. In the reverse case, in an alliance between a '*civis Romana*' and a '*peregrinus*' the child was a '*civis Romanus*'. Quite in accordance with this principle, the child of a free man and a slave woman was a slave; the child of a free woman and a slave man was free."

With regard to *Germanic peoples*, he quotes Dargun: "The connexion between the status of the mother and that of the children appears very clearly in ancient Danish legal documents, and we do not hesitate to assert, that as regards this matter, the Danish Law has preserved a more primitive and original character than the laws of Iceland, Norway and Sweden. . . . Andreas Sunesen says in his paraphrase of the law of Scania, its oldest monument: 'Matris conditionem sequitur semper partus, ut sit liber partus ex libero ventre procreatus, licet pater servili conditione premeretur.'—In like manner the Waldemar-Zealand law ordains: 'Ut partus . . . sit servus ex ventre servili progenitus, quantum-cunque pater inter ingennos nobilitatis genue praefulserit.'" Wilken adds in a note: "As regards the transmission of nobility, it very soon became a general rule among the European nations that this was done through the man, so that in marriages between nobles and commoners, the child followed the status of the father. Exceptions to this rule occurred however even in later times, for instance in France in Champagne and Barrois. In his *Précis de l'histoire du droit français*, Viollet, for instance, says: 'It is certain that in the fourteenth and fifteenth centuries, maternal nobility, i.e. nobility through the mother, was sanctioned in Champagne. . . . The maternal transmission of nobility . . . in Barrois . . . has not been questioned. The transmission of nobility through the mother has led to the saying in Champagne and in Barrois: *the womb ennobles*. The question however is to what extent this principle . . . was a direct relic of matriarchy, or whether in a similar

manner as the rule *partus sequitur matrem* in marriages between free persons and slaves; it has been found under patriarchy.' "

He also mentions *Islam.* " No Mohamedan is allowed to marry his own female slave, until he has set her unconditionally free. The children then naturally followed the status of the father. For the rest, the rule *partus sequitur matrem* obtains in the law of slavery; if the mother is free, the children too are free; but if she is a slave woman, the children are slaves to her lord. Very probably the rule is of pre-Islamic origin, and . . . it took form under the patriarchal or agnatic system of kinship which in the latter days of the Jahiliya must have existed . . . in the principal regions of Arabia."

The rules concerning the condition of the children of mixed marriages found under the dominion of matriarchy and patriarchy have in the main continued to exist even when these two systems have been merged in the " parental " system of relationship. New provisions have however appeared. Sometimes, for instance, a rule probably of late origin is enforced that the child in mixed marriages follows the lower status, " the worse hand " as it is expressed in the old German codes of law in which the precept occurs. Among the ancient Romans likewise, in deviation from the original rule " *partus sequitur matrem* ", it was afterwards ordained by the Lex Minicia, that in alliances between persons not possessing the " *connubuim* ", the child should belong to the status of the parent who held the lower position. Among the people of the Malayan Archipelago a rule of this description does not appear to exist. On the other hand, we constantly meet with the rule, not altogether foreign to the old Germanic law either, that half *the children follow the status of the father and half that of the mother.*

He then goes on to discuss Malayan systems characterized by this division of the children.

I do not at this stage propose to discuss the legendary theories of the origin of matriarchy. I shall postpone consideration of them till later on in this chapter when I discuss the " *adat kamanakan* ". There is just this to be noted about them here, that they accept that matriarchy followed after a patriarchal or parental system. Now, whether one gives any weight at all to legends seems to me to be largely a matter of fashion. The chief reason we do not like to take them seriously is because of the legend of a golden age, which would upset our scientific theories. Yet it would appear to me that a certain amount of evidence is accumulating that old legends tend to contain some minute particle of truth. Now in both of the old legends it is asserted that on a certain occasion a

king disinherited his children in favour of his sister's children and ordered that the example be followed generally in his kingdom for evermore. It seems to me that we can cut out of this story as improbable the individual incident which was the occasion of the king's decision, the king, his children and his nephews, and his decision, and the sudden change of custom. But may there not have been at least an original parental system out of which matriarchy developed?

We have hitherto considered the possibilities of matriarchy having been the most primitive, and therefore original, type of human society. I have just suggested the very vague possibilty that matriarchy should have come into being through what one is I think forced to call the degeneration of a higher type of social system, the parental. There remains the possibility of matriarchy having evolved from a yet more primitive social system, namely the totemistic. This is the theory which would most closely fit in with the trend of modern thought. I have found no evidence bearing on the matter one way or another in Malaya or among the Nayars. But the evidence exists in the case of the Bants. The Bants are divided into exogamous septs or tribes (from what I can see they are not true clans in that they have no political or economic function). These septs are known as *bali*, and are traced in the female line. Children belonging to the same *bali* cannot marry, and the prohibition extends to certain allied *balis*. These *balis* have curious names. Thurston gives a selection: Jaggery (sugar candy), ashes, weaver, hornet's nest, scorpion, strychnos nux vomica, jack tree, fowl, grean peas, bandicoot, one who removes the evil eye, tiger, ragi (a kind of grain). These names are strongly reminiscent of totemism.

§ 3. FEATURES OF MATRIARCHY

I propose now to leave the discussion of the origins of matriarchy and to proceed to that of some of the features which usually characterize or are associated with matriarchy.

I shall summarize them first briefly:

Matriarchal society has a *tribal constitution*. Marriage within the tribe, or in certain cases within sub-groups of the

tribe, is prohibited. This is the custom of *exogamy*. Primitive matriarchal communities would appear to be characterized by the *communal ownership of property*: though I maintain that matriarchal communities can at least grow out of this phase. This communal organization appears to be almost identical with the *joint family* system characteristic of both patriarchal and matriarchal systems in India. The superimposition of a grouping in larger units, the tribe, having a lien on the property of the families which they comprise, leads one to draw a parallel with the *village community* system in India. In India, at least, it would appear that in the most primitive forms of matriarchal communities the *management* of the property of the joint family was in the hands of a woman and that in the course of development it passed into that of a man. In the course of the break-down of community in property a distinction has grown up between *ancestral* and *acquired property*. This has been one of the steps in the *individualization of property*. In the course of this process a peculiar phenomenon frequently appears, the "*adat kamanakan*", by which a man's property is inherited by the sons of his eldest sister. The break up of communal groups takes place by *partition*. We shall see that the origin of partition in India and Sumatra has been essentially different, though Nĕgri Sĕmbilan has slightly more affinities with India. Finally, there is a social phenomenon of the greatest importance, the *absence of polygamy*. Primitive matriarchy has probably been generally characterized by polyandry: modern developed matriarchy appears to be characterized by monogamy. In any case polyandry is absent. Going into these points in greater detail:

It seems to be usually taken for granted that exogamy is always associated with the tribal constitution of society. Unless, however, patriarchal Hindu society was originally tribal in constitution, a thesis which I have not seen argued, exogamy can exist quite apart from tribal organization.

The *gothra* is probably the ultimate exogamic unit in Hindu patriarchal society. Mayne (*H.C.L.*, p. 87) argues that the general Hindu system is only a special form of exogamy, the prohibition of marriage extending to relationship of four or

six degrees, not in such cases corresponding to any tribal unit. Some of the Sanskrit writers, however, extend the prohibition to the whole of a *gothra* : i.e. the family worshipping a common ancester. Now this is merely a religious unit. It has certainly no political or economic function. But a tribe, or clan, is presumably more than a religious unit.

As one of the most recent opinions on the subject I quote from a review by W. J. Perry : "The organization in clans appears to be political rather than social and all attempts to base its origin on purely social principles are bound to fail."[1]

It is, however, claimed by others that the tribe or clan has even wider significance. I quote the paragraph on the Clan in Malinowski's article in the *Encyclopædia Britannica*: "The clan and the classificatory principle of kinship appear on a closer sociological analysis not to be substitutes for the family and the household, but the outcome of more extended co-operation in matters other than sexual mating and the rearing of children. The clan functions principally in economic, in legal, and above all in ceremonial matters. It is also closely connected with age-grades, secret societies and men's clubs wherever these exist, with the ceremomial distributions of wealth, with magical specialization and co-operation. Thus in its functional definition, the clan represents the non-sexual and non-genetic extension of the kinship principle beyond the household and above the natural function of the family. Exogamy again appears as an additional bond of solidarity—a natural extension of the principle of incest running side by side with the extension of the kinship principle. As the link between the individual family and the wide groupings of local and political type, the clan is of special importance." Bringing this account into relation with Malaya it is clear that the *pĕrut* being originally a household it was the large organization of the *suku* which corresponded with the clan. In the Malay Peninsula, however, by ceasing to have big houses, and by the progressive individualization of society, the family unit being no longer a large household as in Sumatra, but a small family consisting essentially of mother, father and unmarried children,

[1] *Journal of Philosophical Studies*, Vol. III, No. 2, p. 394, July 1928.

in other words a family of the "parental" type, the *pĕrut* has become a clannish organization as well as the *suku*. Their functions have become diverse. The *suku*, non-local, spread over a whole state, appears to have essentially a political and legal significance. It is the *suku* round which is built up the system of rights and obligations. It was the Biduanda Suku in Rembau which by a legal fiction assumed ownership over all the land in the State, derived from the indigenous Jakun population, and other *sukus* bought their rights from the Biduanda. Injury, guilt and retribution could, I believe in extreme cases, affect *sukus* as wholes. It was the tribal chief who decided which member of a murderer's family should be the substitute for the murdered man. It would be interesting to trace out ceremonial customs, but my impression is that major ceremonies were the affair of the *suku* and its headman the *lĕmbaga*.

There may, however, be two strata of ceremonies. Those connected with the soul of the rice plant such as the triennial *puah* (or *puar*) are probably local. They may be organized within a *pĕrut*.

The *pĕrut* tends to be a local organization, I would suggest that its functions in the Malay Peninsula have become primarily economic—economic co-operation.

Among the Bants we have met the *bali* as an exogamous unit distinct from the family; indicating in the names of individual *bali* affinities to totemism.

Among the southern Nayars the *tarwad* is the exogamic unit: the *tarwad* being the social unit from all points of view.

In North Malabar we have been confronted with a new exogamic unit, the *kulam*. One of its essential characteristics is that it appears in a certain measure to cut across territorial organization. In this it has extraordinarily strong affinities with the Malayan *suku*. It should be noted that from the point of view of practical administration of a country a grouping which is at the same time social and administrative *and is not geographical* causes tremendous difficulties. It is the essential weakness of the Malayan system that there is no means of working down to a smaller territorial unit than the *nĕgri*

(actually in Rembau the *nĕgri* is divided into two sub-divisions, *baroh* and *darat*, low and high country, and each tribe is split into two, there being a *baroh* and a *darat* chieftain for each part). The Nayar system gets over this difficulty in the south by having no form of grouping which is not territorial, in the north by restricting the significance of the non-territorial grouping to the taboos and injunctions of marriage custom. If, as is suspected, the *kulam* grew out of the *tarwad* by pure physical increase in numbers, it must be presumed that the large unit, probably as it ceased to be strictly territorial, was not allowed to retain the characteristics essentially connected with territoriality.

A most peculiar phenomenon is the *grouping of the exogamous kulam in endogamous subcastes.*

Now this fact does not seem to strike Anglo-Indian writers as anything extraordinary. Perhaps in the midst of so many inexplicable customs they have got out of the habit of looking for their origin? It would, however, seem to me that this phenomenon is paralleled in Sumatra. I shall paraphrase Wilken's theory, starting at the very beginning.

According to him pure tribal organization can only exist under nomadic conditions. When tribes first begin to settle down to agriculture the members of each individual tribe live together in a village. As the population grows and all the arable land within easy reach of the village is in use, parties go off pioneering, founding fresh villages which remain subsidiary to the mother village. In course of time a whole *negari*, or district, becomes occupied by one tribe. Then one of two things happens, either primitive conditions are preserved, each *negari* continuing to be inhabited by only one tribe, or territorial mixing of tribes begins to take place. The territorial mixing he explains as follows: Being exogamous there is a tendency to make friends with a neighbouring tribe in order to intermarry, and intermarriage between those two particular tribes becomes the established custom. Under these conditions there would be a tendency for the two tribes to interpenetrate territorially. The tendency towards intermigration would be encouraged so as to facilitate marriage.

This state of affairs exists in a most diagrammatic and extreme form among the Bataks. In each district there are two, and only two, tribes united by the *jus connubii*. These two tribes are indissolubly joined. No settlement is complete when they are not both represented. But one of the tribes is always the senior, the other the " guest ". The theory of the origin of this state of affairs is supported by the fact that in another district the same two tribes are found with their relations reversed: the tribe which in the former district was the guest is now the head tribe, and vice versa.

In Mĕnangkabau Wilken believes there to have been originally only four tribes, and it would appear that these tribes were organized in the above described manner in couples, with the exception however that in Mĕnangkabau the tribes were equal, there being no overlordship by one tribe. There is a definite indication of this state of affairs having existed in the grouping of the four original tribes into two *laras*. Later, however, the *jus connubii* extended across the gap; then the original *suku* broke down into about forty, so that now all forty tribes are united by the *jus connubii* and there are no endogamic units. But the endogamous units did exist in Mĕnangkabau and still exist in the Batak country. It would be interesting to see whether the same origin can be traced for the endogamous sub-castes of the Nayars. Remember that the essence of the development was territorial propinquity bringing about a *jus connubii*. We might hazard the guess that in those turbulent times friendliness with one other tribe was all that any tribe could manage: otherwise I see no reason why the *jus connubii* should not grow up among three or four neighbouring tribes (in such a case all the chances would be against a clear-cut boundary of the endogamous unit).

An alternative theory for the origin of the endogamous sub-castes would be the characteristic Hindu tendency towards the sub-division of castes (castes having the two main functions of endogamy and community of pollution).

The chief significance which the tribe has for us is in the matter of property. Whether one holds or not that tribal society in a pure or primitive condition is necessarily communal

it is clear that the *pĕrut* and *suku* in Malaya have a considerable lien over the property of their members.

It is as well in this matter to guard very carefully against being influenced by one's own political opinions or preconceived theories. " While, on the one hand, the writers, who, like Buecher, assume an atomized economic production, admit only of individual or personal ownership, those following Morgan, and influenced by a strong socialistic bent, Engels, Bebel, Cunow, make the savage into a communist. As a matter of fact, property, which is but one form of legal relationship, is neither purely individualistic nor communal, but always mixed." (Malinowski, *E.B.*, XXIX, p. 153.)

But in order to make the following discussion more intelligible I may as well say straight out that I myself am prepared to admit that the joint family in Malabar and Mĕnangkabau was originally purely communal in nature : that I maintain, however, that the peninsular *pĕrut*, the linear descendant of the Mĕnangkabau joint family, is no longer a joint family, that property has become atomized, though a lien remains on the part of both *pĕrut* and *suku*, so that Blagden is wrong in saying, " There can be no doubt that, in thus treating the Mĕnangkabau women in the Peninsula as individual owners . . . the *adat* has been misunderstood " (*Malayan Soc.*, p. vii), and that Parr and Mackray are wrong in maintaining that property is at the present day vested in the tribe, not in the individual members of the tribe.

Parr and Mackray say on this subject : " From the postulate of the exogamic tribe as the social unit, two main principles, governing the possession of property, are to be deduced :

(*a*) All property vested in the tribe, not in the individual members of the tribe.

(*b*) All ancestral property vested in the female members of the tribe.

" The communal nature within the family (*pĕrut*) of the right to an orchard is a matter of observation at the present day, and affords valuable corroborative evidence as to the limits of proprietary rights in redeemed lands."

This is the only evidence they produce in confirmation of the former of the two theorems. It should be noted that the theorem was advanced on no evidence whatever, merely on the strength of a logical deduction—which, as a logical deduction, fails completely to convince me. Exogamic tribal organization does not necessarily entail matriarchy. "Like matriarchy, so patriarchy is most pronounced where it is still coupled with exogamy" (*Mal. Soc.*, p. 120), and the matriarchal tribes in the Malay Peninsula do not at the present day own property communally: in so far as they show signs of a communal phase within the last few centuries the group was the *pĕrut* (family) rather than the *suku* (tribe). I must concede the possibility however of the *suku* having been a communal group at a yet more remote date—but the communism was of a different sort: analogous to that of certain village communities in India. The members of the communities were not individual human beings, but individual *pĕruts*, joint families.

My own researches show that this communism in rights in orchards is only known or remembered at the present day in parts of the states of Rembau and Naning, including the locality in which Mr. Mackray lived, and that the existence of such communism is denied (at least) in parts of Rembau and in Jelebu. Even where communism in orchards was admitted it was denied that it was in any way the remnant of a former general law of property: it was maintained that these durian orchards in question, situated as they are in virginal forest, are an exceptional case for the reason that they are not cultivated; they do not represent the result of any man's labour. All the labour expended on them is the clearing of undergrowth each fruiting season. No trace of communal ownership of cultivated land can apparently be remembered by anyone now living.

In Sumatra, on the other hand, communal ownership of property by the *pĕrut* still exists, which seems to show that in the Malay Peninsula there has been a fundamental change in the laws of property since the migration from Sumatra.

My researches show, in fact, that the situation is markedly different from that painted by Blagden in the following words:

"It has been supposed (*inter alia*) that the *adat*, or customary law, invested the women as such with individual ownership of land. Nothing could be further from the truth. The *adat*, as Wilken rightly points out, conceives of *pusaka* (i.e. inherited) land as the property not of an individual but of a family or tribal group, wherein the females do indeed enjoy preferential privileges of usufruct, but are subject nevertheless to a sort of administrative control (something like the powers usually given to a trustee) on the part of their brothers, or at any rate the eldest brother; including authority to prevent improper alienation, waste, and the like. Such a system is much more akin to the Hindu joint family (which, be it observed, is recognized and supported by law in British India) than to our European notions of individual ownership. Only the Mĕnangkabau family, unlike the Hindu one, descends in the female line."

These views of Blagden, I repeat, I cannot agree with. They do represent conditions in Sumatra. But customary law in the Malay Peninsula has developed a long way towards individualism.

The tribe is no longer interested in the property as an owner but as a guardian. In one sense the lien over the property of the tribe is a survival. Even the responsibility of the tribe as a whole for the debts or misdeeds of its members is no longer more than a theory. In another sense, however, this control over the ancestral property of its members is the genuine expression and symbol of a living reality—tribal solidarity.

I am not aware of the existence of any direct evidence as to the nature of customary law in Mĕnangkabau at the time when the migration to the Malay Peninsula started. One can only presume that it was something like that in the Mĕnangkabau country now—because of the apparently more primitive character of the latter (as compared with the customary law in the peninsula.)

According to Wilken there would in the Mĕnangkabau country appear to be two grades of units: the household and the group of households of the same tribe which formed a ward

in a village. I shall quote from Wilken's account: "The members of the different *suku* represented in the village do not live together promiscuously. On the contrary in each village members of the same *suku* keep close together, and form a separate ward, a *kumpulan rumah* as it is called. Of such a *kumpulan rumah*, that is of a *suku*, or rather the branch of a *suku*, present in a village the Malay says . . . . 'inhabitants of a *kumpulan rumah* are members of the same family; they have one root and one crown; debts and claims for debt they have in common; disgrace and honour they share together.' It is clear enough that the Malay esteems the *suku* as nothing more than a large family. [I should have thought that the inference was that he esteemed the *kumpulan rumah* as nothing more than a large family.]

"Every *suku* represented in the village thus forms a definite entity, locally separated from other *suku*. Let us now see what happens when a member of the *suku* marries. Only the descendants in the female line belong to the *suku*: it is therefore through the wife that the *suku* is propagated; she is the tribal mother. Accordingly the woman at marriage remains in her *suku*, in her *kumpulan rumah*. As a matter of fact she does not even leave the house where she was born and has grown up. But the man also when marrying remains in his *suku*, in his *kumpulan rumah*, neither does he leave the house where he was born. Marriage does not involve a living together of the married couple. Married life manifests itself only in the form of visits which the husband pays to his wife. In the daytime the husband comes to see his wife, assists her in her labour in the rice-fields, and has his midday meal with her. So, at least in the early days, later his visits by day become less frequent and he comes in the evening to his wife's house, and remains, if he is a faithful husband, till the next morning. . . . Man and wife do not form a household. On the contrary the husband continues to belong to his *suku*, his kinsfolk, and the wife with her children to hers. The family, therefore, does not comprise husband, wife, and children, but only wife (or mother) with her children. . . . At the head of this household stands the mother's eldest brother. This

person, the uncle on the mother's side, the *mamak* as he is called, has the rights and duties of a real father in respect of his sister's children, his *kamanakan*. The father himself, as not belonging to the family, has no authority over his own children. He in his turn, at least if he be an eldest brother, stands at the head of his *kamanakan*, his sisters' children.

" So in the house of a Mĕnangkabau Malay one finds, as a rule, a considerable number of persons collected. At marriage, as we have seen, the woman does not leave the house of her birth, nor does the man leave his. In a Malay dwelling therefore we naturally find collected children and their mothers, and further uncles, aunts, grandmothers, great-uncles and great-aunts, all, of course, on the mother's side. This group of relations all inhabiting the same house, the Mĕnangkabau Malay with his matriarchal point of view comprehends in the expression *sa-buah parui*, literally, 'who are of one womb,' *parui* being the Mĕnangkabau pronunciation of *pĕrut* 'womb'. The head of the *sa-buah parui*, the family, is usually the senior of the heads of the various branches of the family, the senior of the uncles on the mother's side, that is the senior *mamak*. This head of the family bears the name of *tungganai panghulu rumah* or *tuwō rumah*. With every marriage of a female member of the family, the number of inmates of a house naturally increases; few native women remain childless. From time to time additions are made to the common dwelling-house. But if the family becomes too large it subdivides into two groups; the most closely related remain together, and the two groups thus occupy two dwellings. Thus two *buah parui* are formed, which together constitute one *kampong*, according to the Mĕnangkabau pronunciation, *kampueng*. The *tungganai* of the senior or original *buah parui* is the head of the *kampueng* and as such is called *panghulu kampueng*" (*Mal. Soc.*, p. 20).

This picture resembles extraordinarily closely the Hindu Joint Family. The best way of obtaining a clear comprehension of the latter is, I think, to plunge boldly with Mayne into his conjectural reconstruction of the development of the patriarchal joint family from the patriarchal family.

We need not here discuss the question whether in fact the joint family has ever developed in this way. It seems to be certain that the rival and more generally accepted view originating with McLennan that patriarchy developed out of the matriarchal joint family is in a number of cases the right one. We shall see that in the Malay Archipelago on the breakdown of matriarchy a form of *parental family* develops which has strong leanings towards patriarchy. In the Malabar *tarwād* the managership by the eldest male of the matriarchal joint family has become such a dominating factor that there is a close assimilation to the conditions obtaining in a patriarchal family. Nevertheless, whether or not Mayne's theory be historically true, it is logically highly illuminating and by analogy has a considerable bearing on the constitution and breakdown of the Mĕnangkabau matriarchal or joint family.

"The Patriarchal Family may be defined as a group of natural, or adoptive, descendants held together by subjection to the eldest living ascendant, father, grandfather or great-grandfather. Whatever the formal prescription of the law, the head of such a group is always in practice despotic [Note: in power, in ownership of other members of the family, in ownership of material property. G. de M.] and he is the object of a respect, if not always of an affection, which is probably seated deeper than any positive institution" (Sir H. S. Maine, *Early Institutions*, p. 116).[1]

Manu: "Three persons, a wife, a son, and a slave are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong."[1]

"The transition from the Patriarchal to the Joint Family arises (where it does arise) at the death of the common ancestor. . . . If the family choose to continue united, the eldest son would be the natural head. But it is evident that his position would be very different from that of the deceased Patriarch. The former was head of the family by a natural authority. The latter can only be so by a delegated authority. He is *primus inter pares*. . . . He is no longer looked upon as the owner of the property, but as its *manager*. He may be an autocrat as regards his own wife and children, but as regards collaterals he is no more than the president of a republic."[2]

[1] Quoted in Mayne, p. 305. [2] *Ibid.*, p. 306.

I would suggest that this process may have occurred within the *matriarchal* family. From the little I know of the *Alya Santana* law it seems to be an instance of matriarchal family as contrasted with joint family constitution, a contrast parallel to that which we have just seen between the patriarchal family and the patriarchally inclined joint family. The *Alya Santana* system is admittedly primitive as compared with the Nair system. Male managership of the property of a group defined by maternal relations would convert a matriarchal family into a maternal joint family.

A peculiar contrast between the Nair family and the Mĕnangkabau family is that while both seem to have been identical at one stage, in the former male managership has become a progressively more marked feature, sufficient, had it not been for the crystallizing effect of the British legal system, to convert the maternal joint family into a patriarchal family. In the latter, at least in the population which migrated to the Malay Peninsula, male managership has dwindled in importance, so that with the help of the growth of another tendency, that of partition, not a patriarchal system but one of individualized female ownership of property has grown up.

This, *individualized female ownership*, is the great characteristic of the peninsular, system.

We have already seen that in Mĕnangkabau "with every marriage of a female member of the family, the number of inmates of a house naturally increases: few native women remain childless. From time to time additions are made to the common dwelling-house. But if the family becomes too large it subdivides into two groups: the most closely related remain together, and the two groups then occupy two dwellings" (*Mal. Soc.*, p. 20).

This *splitting up* into two branches must, however, be distinguished from the true *partition into individual shares* which can take place under patriarchal Hindu custom, and which, under Hindu law, can apparently alone be called *partition*. (This true form of partition, however, takes place also in the Malay Peninsula. We shall return to this later.)

The splitting up of the Malabar *tarwād* is extraordinarily

similar to the splitting up of the Mĕnangkabau *pĕrut* described above. In Malabar and Canara, at the present day, no right of partition exists. "In some cases, where the family has become very numerous, owns property in different districts, the different branches have split into district *tarwāds,* and become permanently separated in estate. But this can only be done by common consent" (Mayne, p. 317).

There is in practice a considerable difference between the manner of splitting up in Malabar and in Mĕnangkabau. In Malabar a *tarwād* breaks up into two distinct and unconnected *tarwāds,* in Mĕnangkabau the two *pĕruts* resulting from the subdivision form together a new unit, the *kampong.* It would appear that the *kampong* was essentially a minor political unit, the *pĕrut* remaining essentially the social unit. As to which of the two is the more distinctive economic unit I am not clear; but would be inclined to lay odds on the *pĕrut.*

It is not clear from Wilken what relation the *kampong* bears to the *kumpulan rumah,* the ward in each village containing members of one *suku.* In the Malay Peninsula there are traces of the *kampong* organization in the eight *kampongs* of the Biduanda tribe in Rembau, none however of the *kumpulan rumah* system. The *kampong-kumpulan rumah* system may have analogies with the Village Community System in India (which we shall discuss later).

As we shall see later, the social unit *kumpulan rumah* has no material basis for its existence in the Malay Peninsula owing to scattered homesteads having taken the place of the concentrated villages of Sumatra.

The Malabar and Mĕnangkabau partition have both taken the form of a split up of the family into two sub-families, one of them moving off into a new communal house; furthermore they have in common that they are brought about largely by the growth of the family—by the family becoming too numerous for the common dwelling-house. Presumably the growth of the family is dependent on the acquisition of land by purchase or the conversion of sufficient waste into cultivated land to support the extra population. It is a most

interesting fact that whereas in patriarchal India there appears to be no attempt to limit the growth of families, it is strictly limited among the matriarchal Nairs by the manager of the *tarwād* refusing to give his consent to early marriages where the means of support of a family are inadequate. Given the excess of available land postulated above, the size of a *pĕrut* or a *tarwād* is limited only by the architectural science and civil-engineering skill of the population. If either race could build so huge a building as Versailles, the size of the joint family would presumably only be limited by the amount of living accommodation of that building, unless indeed new limiting factors had come into play, such as the distance from the family house to the remoter holdings, making it perhaps impracticable to cultivate them without improved means of communication.

The partition of the patriarchal joint family is, however, very different in form and in essence.

It is the secession of an *individual* from the group instead of a break up of the group into two—and has been occasioned by the modern economic factor of " self-acquisitions ".

Mayne writes: " Partition would begin to be desired when self-acquisitions became common and secure. A man who found that he was earning wealth more rapidly than the other members of his family, would naturally desire to get rid of their claims on his industry and to transmit his fortune entirely to his own descendants. This is one of the commonest motives which brings about divisions at present. But the family feeling against partition is so strong, since what one gains all the others lose, that it is probable the usage would have had a painful struggle for existence, if it had not been supported by the strongest external influence, viz. that of the Brahmans." [1]

" It was, however, by very slow steps that the right to a partition reached its present form. At first it is possible that a member who insisted on leaving the family for his own purposes, went out with only a nominal share, or such an amount as the other members were willing to part with. . . .

[1] Mayne, p. 318.

It is quite certain that in the earlier period of Hindu law, no son could compel his father to come to a partition with him. Manu speaks only of a division after the death of the father, and says expressly that the brothers have no power over the property while the parents live. . . . Subsequently a partition was allowed even without the father's wish, if he was old, disturbed in intellect or diseased; that is, if he was no longer fit to exercise his paternal authority. A final step was taken when it was acknowledged that father and son had equal ownership in ancestral property; that is to say, when the Patriarchal Family had changed into the Joint Family. It then became the rule that the sons could require a division of the ancestral property, but not of the acquired property. The joint family then ceased to be a corporation with perpetual succession, and became a mere partnership, terminable at will." [1]

Those familiar with the *adat* in the Malay Peninsula will see at once that the analogies as to partition are closest between that *adat* and the above-described patriarchal joint family. Partition in Rembau is described in the following words by Parr and Mackray: "The holder is further bound to maintain the ancestral property intact. This obligation, it is true, is implicit in her position as a tenant, but calls for attention as the ground on which the daughters base their demands to a division of the property during the lifetime of their mother. Veneration for years is a sentiment perhaps not wholly without the range of Rembau experience, but filial affection for an aged relative is conspicuously absent from Rembau practice. The advanced age of the mother is accepted as proof positive of her inability to perform her duty of preserving the property intact, and she may be forced to transmit her interest"—that is to say, to partition the property among her daughters. It should be noted how similar are the pretexts in each case on the part of the children. In the one case a partition was insisted upon if the father was no longer fit to exercise the paternal authority; in the other if the mother was no longer capable of preserving the property intact: in either case

[1] Mayne, pp. 319, 320.

the decay of the power of governance, of organization, on the part of the parent. . . .

Though Parr and Mackray may be right as regards an earlier phase of the custom, that partition was only insisted upon in the mother's old age, they certainly exaggerate as regards present conditions. In my experience it is customary to give a daughter part of her share of land at marriage—and this may take place when the mother is thirty years of age or even less!

In spite of these resemblances between partition of Hindu patriarchal joint family and partition in the Nĕgri Sĕmbilan family, the original cause of the growth of the custom of partition would appear to be different. In India partition is said to have resulted from the growth of "self-acquisitions", some members of a family acquiring greater riches than others: in Malaya the opportunity of growth of such a disruptive force within the family must have been much smaller. I have developed the idea in another chapter that one of the results of the migration from Sumatra to the Malay Peninsula was the breakdown of the compound household.

The springing up of a number of separate households must have led to the partition of land at a much earlier stage.

In the theoretically perfect joint family there can have been no special lien by the acquirer thereof over property he had acquired by his own efforts during his own lifetime: even of such perishable articles as the fruits of cultivation; it all went into the common stock just as in the case, as we shall see later, of the most primitive type of village community, the *Communal Zemindari village.* Ancestral and acquired property must have ranked equally, and all members of the group would have had an equal claim to the use of both.

Mayne writes: "Self-acquired property in the earliest state of Indian Society did not exist. So when the family was of the purely Patriarchal type, the whole of the property was owned by the father, and all acquisitions made by the members of the family were made for him and fell into the common stock. When the Joint Family arose, self-acquisition became possible, but was gradual in its rise. While the family lived

together in a single house, supported by the produce of the common land, there could be no room for separate acquisition. The labour of all went to the common stock, and if one possessed any special aptitude for making clothes or implements of husbandry, his skill was exercised for the common benefit, and was rewarded by an interchange of similar good offices, or by the improvement of the family property, and the increased comfort of the family home. But as civilisation advanced, and commerce arose, new modes of industry were discovered, which had no application to the joint property. As the family had only a claim upon its members for their assistance in the cultivation of the land, and the ordinary labours of the household, they could not compel the exertion of any special form of skill, unless it was to meet a special reward. It was recognized that a member, who chose to abandon his claims upon the family property, might do so, and thenceforward pursue his own special occupation for his own exclusive profit. But it might be for the advantage of all to keep the specially gifted member in the community by allowing him to retain for himself the fruits of his special industry. On the other hand, an injury would be done to the family, if, while living at its expense, he did not contribute his fair share of labour to its support, or if he used any appreciable portion of the family property for the purpose of producing that which he afterwards claimed as exclusively his own. The doctrine of self-acquired property sprang from a desire to reconcile these conflicting interests.

"The earliest forms of self-acquisition appear to have been the gains of science and valour peculiar to the Brahman and Kshatriya. . . . Manu laid down the general rule, 'what a brother has acquired by labour or skill, without using the patrimony, he shall not give up without his assent, for it was gained by his own exertion'. But we can see that self-acquisitions were not at first favoured. . . . It does not appear that an acquirer had from the first an absolute property in his acquisition, to the extent of disposing of it in any way he thought fit. Originally the benefit which he derived from a special acquisition seems to have come to him in the form of a special share at

the time of partition. While the family remained undivided, he would be entitled to the exclusive use of his separate gains. If he died undivided, they would probably fall into the common stock. Probably he was only allowed to alienate, when such alienation was the proper mode of enjoying the use of property. This would account for the distinction which is drawn between self-acquired movables and immovables. The right to alienate the former is universally admitted by commentators, but the Mitakshara cites with approval a text, which states that, 'though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons'. According to the existing Malabar law, a member of a *tarwād* may make separate acquisitions, and dispose of them as he pleases during his life; but anything that remains undisposed at his death becomes part of the family property." [1]

In Malabar the later stages of such an historical development of the custom can actually be traced. The earliest record is contained in Dr Buchanan's book (written at the end of the eighteenth century): "A man's movable property, after his death, is divided equally among the sons and daughters of all his sisters. His landed estate is managed by the eldest male of the family." [2] From this it is clear firstly that *a distinction between movable and immovable property* was already in existence, and that a man had the right of sole enjoyment of the movable property he had acquired during his lifetime. It would appear that this right of enjoyment included an unrestricted right of gift *inter vivos*. Land, however, could not yet, strictly speaking, become "acquired" property: it could only be ancestral. As late as 1859 the Sudder Court held: "It is immaterial in what way land is held in Malabar in a family governed by *marumakkathayam*, the rule being that, however acquired by a member of the family, it becomes incorporated in the family possessions and is under all the restrictions as to alienation affecting such property". [3]

[1] Mayne, pp. 313–17.

[2] *A Journey from Madras through Mysore, Cannanore and Malabar*, by Dr. Buchanan, Vol. II, p. 96.

[3] *Malabar Laws and Customs*, p. 174.

" The first recognition of the right of an individual member to dispose of his landed self-acquisitions comes in a judgment of the High Court passed in 1863, in which the Judges (Phillips and Holloway, J.J.) held that:

" 'Self acquisitions of land by a member of a *tarwād* are his separate property during his life and may be charged by him for his personal debts. After his death, they lapse into the *tarwād* property, but if accepted by the members, they carry their obligations with them.' " [1]

When immovable property therefore first entered the category of self-acquisitions it had two characteristics: (1) it was the acquirer's sole possession during his lifetime, and (2) it could be charged for his debts.

It would seem that the possibility of making gifts of self-acquired immovable property *inter vivos* was a development following very rapidly on the heels of the first appearance of immovable property in the category of self-acquisitions, but the authorities are not very clear on the point. The next step was the effort to make self-acquired immovable property subject to disposal by will. This was at last definitely made legal by Madras Act V of 1898. It has been held by a full bench of the High Court that such property is inherited as ancestral property, or in their words " as the exclusive properties of their own branch, with the usual incidents of *tarwād* property." [2]

To return to movable property. We have seen that according to Dr Buchanan a man's movable property, after his death, is divided equally among the sons and daughters of all his sisters. It would, however, appear that it had been far more usual, almost a universal rule in fact, for it to become *tarwād* property at his death. Lewis Moore makes the significant comment that " in this as in many other cases the probability is that there was no uniform custom till hard and fast rules were introduced by the Courts ".[3]

It would not appear that even movable property has ever descended to a man's children otherwise than by operation

[1] *Malabar Laws and Customs*, p. 175. [2] *Ibid.*, p. 187.
[3] *Ibid.*, p. 177.

of a will. Moreover, this property on inheritance becomes joint family property just as landed property does.

In Mĕnangkabau rights of alienation of self-acquired property (*harta pencharian*) are still at a fairly early stage of evolution. I quote from Wilken: "Children do not inherit from their father. They can receive only gifts from him. Such a gift is called *hibah*. In order to be valid, however, it has to be bestowed in accordance with the *adat*, that is to say in the presence of his brothers and sisters, the heads of the village and a number of other witnesses. It goes without saying that for the bestowing of a gift only the *harta pencharian* can be taken into account. But even of these possessions a man cannot dispose freely; he stands under the control of his future heirs, who even during his life may assert their claim to the prospective inheritance, and consequently are always on the watch to resist any alienation. Nevertheless it has gradually become the rule in many districts that at any rate half the *harta pencharian* of a man can be transferred by gift or *hibah* to his own children".

Unfortunately Wilken does not mention the very material factor, whether the property is movable or immovable. Nor does he mention what variety of self-acquired property is in question. The latter may possibly be a minor point in Sumatra, but in the Malay Peninsula the *adat* concerning acquired property has developed extensively both as regards the phase attained and its complexity. It makes the utmost difference whether property has been acquired during a period of bachelordom (true bachelordom or that following on divorce) when a man is theoretically at least being supported by his mother, or whether it has been acquired during marriage, when a man lives in his wife's house. The first is spoken of as *charian bujang* (bachelor acquisitions) and *charian laki bini* (husband-wife acquisitions). The *adat* concerning these types of property will be developed in the chapters concerning them. Suffice it to say in the first place that in this broken mountainous country the *adat* has developed very differently in different states: that in some children have not yet acquired any appreciable claim to inheritance or gift of acquired property: that, moreover,

the claims of a man's *waris* (relations on the mother's side) are stronger in the case of his bachelor acquisitions than in that of his marriage acquisitions and in immovable than movable property. From the little information at my disposal concerning Mĕnangkabau it would appear that the *adat* concerning acquisitions is very much more highly developed in Nĕgri Sĕmbilan than in Mĕnangkabau. I put this down to the same cause as that which led to the individualization of property in Nĕgri Sĕmbilan, the migration of numbers of young people and the consequent setting up small houses of the European type, each containing a " true " family, consisting of husband, wife and children, instead of the three or four generations descended from a common ancestress contained in the Mĕnangkabau household.

Being only a peasant population, the initial causes which operated in India, the science and skill of individual members, must in Malaya have played an infinitely smaller role. On the other hand, the plantation industries, in particular the rubber boom, must have acted as a powerful agent in bringing about a rapid evolution during the last quarter of a century.

My view is that before the rubber boom the restrictions on the alienation of acquired land were as rigorous as those on the alienation of ancestral land with the exception of local laxities in the way of gifts or bequests to children, and that as a consequence of the rubber boom, if the phenomenon was not already in being, plantation land became a separate category, classed with movable property.

The point at which acquisitions became ancestral was a matter of no importance so long as the restrictions on the alienation of the former were nearly as great as those of the latter. This, one of the more important practical problems at the present day, has therefore not a very definite *adat* behind it. As in the Malabar *tarwād* the original rule almost certainly was that *all* acquisitions, movable and immovable, became ancestral on the death of the acquirer.

In the Indian joint family a distinction is made between two forms of joint family property (co-parcenary property): ancestral and non-ancestral. " All property which (in the patri-

archal joint family) a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is ancestral property, and is at once held by himself in co-parcenary with his own issue. But when he has inherited from a collateral relation . . . it is not ancestral property; consequently his own descendants are not co-parceners in it with him. They cannot restrain him in dealing with it, nor compel him to give them a share of it." This distinction is not made in Nĕgri Sĕmbilan. Once property has become ancestral it remains ancestral so long as it is not alienated out of the *suku* however indirect the line of inheritance may be or even if it be bought and sold (provided the sale take place within the tribe). This is an aspect of greater tribal solidarity.

There may, however, be something faintly resembling this custom in the tendency which exists in Nĕgri Sĕmbilan for acquired property inherited from a collateral to attain a half-way stage towards becoming ancestral.

Mayne describes the condition of the joint family when the right to partition had accrued. The members of a divided joint family could at first forbid a sale of the divided property (in order to secure reversion to themselves). A further extension of the rights of co-sharers took place, when each sub-division was saleable; but the members of the community had a right of pre-emption, so as to keep the land within their own body. This right exists, and is recognized at present by statute, in the Punjab. The existence of an exactly similar right among the Tamil inhabitants of Northern Ceylon is recorded in Thesawaleme.

I have unfortunately not directed my inquiries to ascertain whether there is any customary right of pre-emption in Nĕgri Sĕmbilan on the part of beneficiaries under the *adat* against a member of a family selling his property to a member of the wider family, the *pĕrut*. The right of pre-emption against a sale out of the *pĕrut* and, *a fortiori*, out of the *suku*, is one of the most jealously guarded rights. This right is protected by the "Customary Lands Enactment" in the districts of Jelebu, Kuala Pilah and Tampin (including Rembau); but not in my own opinion in a very satisfactory manner. It should

be noted that the members of the *pĕrut* or *suku* as a whole have no beneficiary interest in the property of an individual member. This right can be little more than a vestige of the communal rights within both units, the *pĕrut* and the *suku*, in days long past.

Parr and Mackray write: "The sale, or mortgage, of ancestral property outside the family or tribe is strictly forbidden, as contrary to the principles underlying the possession of tribal property. Alienation is permissible only if necessary to the performance of such duties of the holder of the property as the payment of the debts of custom or inheritance (for the definition of these, *hutang adat* and *hutang pesaka*, see pp. 122, 123). The sole exception to this rule is a concession to religion.

"A holder of ancestral property, to which no immediate heirs exist, may dispose of that property to pay for a pilgrimage to Mecca. She must, however, grant an option of purchase to her tribe before seeking a buyer elsewhere. Under Malay rule, if a buyer was found in another tribe, the tribal chiefs of either party met on the land, beat the bounds, and planted posts to mark it off, before the price was paid."

One very striking feature of matriarchy in Nĕgri Sĕmbilan is this lien of the *suku* over tribal property. This is a more obvious feature in the peninsular customary law than the lien of the *pĕrut* over property. (Note that Parr and Mackray do not mention the latter lien at all!) The greater importance of the *suku* than the *pĕrut* in this matter has two aspects: firstly, that the sale or mortgage of property to a member of another *pĕrut* of the same *suku* is easier to obtain than to a member of another *suku*; and secondly, that ancestral property sold to another *pĕrut* remains ancestral; sold out of the *suku* it loses its ancestral status.

If one did not know of modern conditions in Mĕnangkabau, where the lien of the *suku* appears to be a vanishing quantity compared to the very strongly developed rights of the *pĕrut*, one would argue that tribal community in property, parallel to the village community system in India, had at one time been more highly developed than the joint family system.

In fact with the village community we have reached one

of the most fundamental of human institutions. Vinogradoff in the *Encyclopædia Britannica* (Vol. XXVIII, p. 68) says: "The study of village communities has become one of the fundamental methods of discussing the ancient history of institutions." Traces of ancient village communities have been found in all parts of the world, all over Europe and in places so far apart as India, Java, China, Mexico, Peru, Africa and Arabia. Sir Henry Maine, in *Village Communities in the East and West,* has argued that the resemblances between village communities of Europe and Asia are too strong and numerous to be accidental and that the differences between them must be due more to climatic than to any deeper causes.

Vinogradoff in summing up the results of his inquiries into European village communities states *inter alia*: "(1) Primitive stages of civilization disclose in human society a strong tendency towards mutual support in economic matters as well as for the sake of defence. (2) The most natural forms assumed by such unions for defence and co-operation is that of kinship. (3) In the epoch of pastoral husbandry and of the beginnings of agriculture land is mainly owned by tribes, kindreds and enlarged households, while individuals enjoy only rights of usage and possession" (*Enc. Brit.*, XXVIII, p. 72).

In view of the wide distribution of this system it will not help us much in our study of the origin of the village community system in Malaya if we establish that an analogous system has existed in Malabar, for it may be a case of parallel development quite as much as of direct influence of one culture upon another, but it is nevertheless of the utmost interest in view of the statements which have been made as to the absence of village communities in South Canara, Malabar and the Northern Circars (Baden Powell, *The Indian Village Community,* p. 366–7), to find that a village community system has existed in Malabar bearing very strong resemblances to the Malayan (Note: I gather from J. D. Mayne that the absence of village communities in the Northern Circars is to be ascribed to the conquests by Mohammedans and Mahrattas; Iyengar argues that village communities did not form in South Canara because the physical features were not congenial to

their formation).[1] In *Land Tenure in the Madras Presidency*, S. Sundararaja Iyengar argues that the Malabar *tara* was in fact a village community system. He writes (p. 90): "The *tara* formed a small republic represented by the *Karnavars* of the Nair inhabitants who constituted it and presented a striking resemblance to the village communities of the east coast. The *nad* or country was a congeries of *taras* or village republics, and the *Koottum* or assembly of the *nad* or country was a representative body of immense power which, when necessity existed, set at naught the authority of the Raja and punished his ministers when they did unwarrantable acts." If one reads *suku* for *tara, Ibu-bapa* for *Karnavan*, and *nĕgri* for *nad*, one gets an extraordinarily good picture of Rembau tribal constitution.

The analogy to the Indian village community system can be pushed even a stage further—the identity between the Malayan system and a special form of the Indian village community, the *bhaiachari* village, can be argued. Mayne, taking the Punjab as his model, traces three evolutionary forms of the village community: (i) The *Communal Zemindari* village: "Under this system the land is so held that all the village co-sharers have each their proportionate share in it as common property, without any possession of, or title to, distinct portions of it; . . . the rents paid by the cultivators are thrown into a common stock. . . ."[2] (ii) The *Pattidari* village: ". . . each sharer manages his own portion of land. But the extent of the share is determined by ancestral right, and is capable of being modified from time to time upon this principle."[3] (iii) The *Bhaiachari* village: "It agrees with the *pattidari* form, inasmuch as each owner holds his share in severalty. But it differs from it, inasmuch as the extent of the holding is strictly defined by the amount actually held in possession . . . no change in the number of co-sharers can entitle any member to have his share enlarged. His rights have become absolute instead of relative, and have ceased to be measured by any reference to the extent of the

[1] *Land Tenure in the Madras Presidency*, p. 90.
[2] Mayne, p. 300.
[3] *Ibid.*, p. 300.

whole village, and the numbers of those by whom it is held. This is exactly the state of a family after its members have come to a partition."[1] Considering the *pĕrut* as the unit of co-sharers this last description fits the Malayan *suku*. The ancestral property of each *pĕrut* has become definite. If the whole of the cultivable land were already occupied as in India it would be true to say that "the extent of the holding" of each *pĕrut* was "strictly defined by the amount actually held in possession", and that "no change in the number of co-sharers [*pĕruts*] could entitle any member to have his share enlarged."

It is also clear that so far as one can extend these terms to the joint family one can speak of a similar evolution in Malaya. The Mĕnangkabau joint family bears a strong resemblance, allowing for more primitive economic conditions, to the *communal zemindari* form, the peninsula *pĕrut* to the *bhaiachari* form. The ancestral property of each sub-family has become definite: no adjustment of shares is possible. The condition is in fact strictly like that in the Hindu joint family in which *partition* has taken place.

In a later chapter I shall argue that the *Adat Kamanakan*, implying as it does a certain individualization of property, is rather a break-down product than an original feature of matriarchy. It is all the more remarkable that it should be the feature which has most stirred the imagination of matriarchal communities themselves, and that it should form the nucleus of the legends about the origin of matriarchy.

The Sumatran legend is as follows: "As the story goes the *adat kamanakan* . . . was instituted only after the Malays has taken possession of the Padang Highlands, by the two renowned law-givers, the brothers Datuk Katumenggungan and Perpatih Sebatang. The story goes that once when they were sailing to Acheh, their vessel ran ashore and as the water was low they said to their children: Come and act as rollers for our stranded boat! The children refused, but their nephews (sisters' children) offered themselves willingly for this service. It was therefore decided that from that time forward the

[1] Mayne, pp. 300–1.

inheritance should descend, not in the direct line to children or grandchildren, but to the sisters' children." [1]

The legend centres round the greater altruism of the nephews than the sons. The Canarese legend varies this theory rather curiously, the nephew offers himself as a sacrifice and the uncle hesitates to sacrifice a son also, so the uncle and the nephew apparently change places, the nephew becomes king and makes the system compulsory.

It is in keeping with the Hindu type of moral story that the nephew in this case should have profited directly from his virtue.

The over-condensed account given by Sir Sankaran Nair in Mayne's *Hindu Law* is as follows:

"The *Alya Santana* system is said to have been introduced into South Canara in A.D. 77 by Bhutala Pandya. He had been surrendered, as a sacrifice, to Kundodara, the king of the demons. When Kundodara demanded another sacrifice the reigning prince, his uncle, refused to grant one, upon which Kundodara compelled the prince to bestow his kingdom upon his nephew, and not upon his sons, and this example was made compulsory by Bhutala Pandya upon his subjects." There is said to be a variant of this legend. It would be interesting to hear it—and also to hear the Malabar legend of which all I know is that it states that matriarchal custom was introduced by Parasu Rāma, an incarnation of Vishnu, after reclaiming Malabar from the sea.

In the Malay Peninsula, in spite of matriarchal custom being called the *adat perpatih*, the particular point of the custom is almost entirely absent. In my experience even male implements such as weapons (provided they are ancestral) are inherited by a man's female blood relatives and handed over by them to their sons. I only know the one case of the chieftainship of Naning passing to the eldest son of the eldest sister. (Compare this with the custom in Cochin, as I myself picked it up in Cochin in 1912: the heir is the eldest son of the Maharajah's eldest sister, begotten of the holiest recluse of the Nambudiri caste, which claims to be the holiest caste in all

[1] *Mal. Soc.*

India, this recluse being ushered into the princess's bed-chamber in the dead of night, theoretically with absolute secrecy).[1]

In the Malay Peninsula the question of the manner of inheritance of dignities other than that of the Datok Naning does not arise as they are elective. It is maintained, however, by Che Omar (Sungei Ujong) that the elective system in the peninsula originated in the inheritance of dignities by nephews according to the *adat kamanakan*, the elective principle developing with the multiplication of descendants, the original *pĕruts* breaking up into a number of new ones, each *pĕrut having to be given* its turn. If this theory is correct, the original *adat kamanakan* in the peninsula can have given no preference to the eldest son of the eldest sister: the idea must have been from the first to select a suitable man for a chieftainship from among all the sons of all the sisters.

Managership is a very characteristic feature of the joint family. How did it arise? Mayne argues, as we have already seen, that in the patriarchal joint family it arose out of the patriarchal family, from the despotic power and ownership of the patriarch, therefore out of an extremely individualistic institution, by the increase in prominence of the family tie, the family continuing to hold together after the death of the patriarch, the eldest son taking on the rôle of patriarch not only with respect to his descendants but towards his collaterals. The development of communal ownership would have proceeded by the brothers weakening the authority of the eldest-born without seceding, the evolution of the patriarch into a mere manager proceeding therefore *pari passu* with the evolution of an extreme form of individualistic ownership into communal ownership.

At first sight a form of development parallel to this could not be postulated of managership in the matriarchal joint family, for the reason that the manager is almost invariably a man.

[1] Compare Appendix XLIII. Doubt is thrown therein on the accuracy of my account. It may be that in 1918, with the advice of the British Government, the old custom was abandoned, the line of succession being made more elastic, so that the most suitable member of the royal family should succeed to the throne.

It is however very clear that in India at least managership of matriarchal joint families was originally by the senior woman, not the senior man. I take it that Lewis Moore is quoting Buchanan (who wrote in about 1800) when he says: "The ancient rule was that the woman should remain in her own house and be visited by her so-called husbands and that the *eldest female should be head of the tarwād.*"[1] Moore introduces this by saying: "Buchanan was, as is well known, a most conscientious and trustworthy observer and it is scarcely possible that he can have been mistaken as to what was the custom in Malabar at the time of his visit." He adds: "Time has brought about modifications in this system and in Malabar though not in Canara the eldest female has given way to the eldest male." He is, as it happens, too sweeping in this statement. According to a judgment of the High Court, which he himself quoted in another part of his book,[2] among the royal families of Malabar the senior lady still is the manager: "The parties to this suit are members of the family of the . . . Zamorins of Calicut. The family comprises three *kōvilāgams* or houses. . . . Of these three each has its separate estate, and *the senior lady of each kōvilāgam . . . is entitled to the management of the property of the kōvilāgam.* In the management of the properties of these *kōvilāgams*, the senior ladies are often assisted by the males or Rajahs, who in time may pass out of the *kōvilāgam* and attain one of the separate *sthānams* (chieftainships)."

In South Canara, under the more primitive *Alya Santhāna* system of law, the senior woman is still the manager. Rao Sahib T. Raghaviah writes: "In a district like South Canara, the woman that does not know agriculture is the exception, *I have often come across respectable women of the landed classes, like the Bants, Shivallis and Nairs, managing large estates as efficiently as men.* The South Canara woman is born on the land, and lives on it. She knows when to sow, and when to reap; how much seed to sow, and how much labour to employ to plough, to weed or to reap. She knows how to prepare her seeds and to cure her tobacco, to garner her grain, and to

[1] *M.L.C.*, p. 56. [2] *Ibid.*, pp. 344, 345.

preserve her cucumbers through the coming monsoon. She knows further how to feed her cow, and to milk it, to treat it when sick and to graze it when hale. She also knows how to make her manure, and to keep the fuel reserve on the hill slope above her house growing by a system of lopping the branches and leaving the standards. She knows how to collect her areca nuts and to prepare them for the market, and to collect her coconuts and to haggle for a high price for them with the customers. There is in fact not a single thing about agriculture which the South Canara man knows and which the South Canara woman does not know. It is a common sight, as one passes through a paddy flat or along the adjoining slope, to see housewives bringing out handfuls of ashes collected in the oven over night, and depositing them at the foot of the nearest fruit tree on their land." [1]

How this female managership arose one can only guess. By analogy with Mayne's conjectural reconstruction of the origins of the patriarchal joint family one can suppose it to have arisen out of a " matriarchal family " in which all ownership and rights were centred in the matriarch, by a process of, as it arose, lateral growth of the family, the senior lady becoming thereby *prima inter pares* by a process therefore of extreme individualism developing into extreme community of property.

This suggestion is, as far as I know, made for the first time in these pages. There exists just a vestige of evidence to support it. The male head of a Nair *tarwād* is called a *karnavan*, and the original meaning of *karnavan* is merely uncle. Now the female head of a South Canara *tarwād* is called *ejuman*, and *ejuman* means primarily *owner*, by extension master. The obvious inference is that the female head of the family was originally lord and master thereof and of all the chattels pertaining to it.

Any endeavour to trace origins still further back can have little chance of success : one is met by a wall of thick mist in which shapes can hardly be distinguished. Arguing however

[1] *Indian Review*, VII, 1906—quoted in *C. and T. of S.I.*, Vol. V, pp. 149, 150.

purely *a priori*, I would suggest that mere economic or social causes cannot have been sufficient to produce a state of things so different from the rule of the "Old Man" which one would have expected to have met. I would suggest that some religious idea centring about the Great Mother of the Gods can alone have had sufficient force to bring about this condition.

So much as to the origin and history of managership of the matriarchal joint family: what are the present conditions in Sumatra and the Malay Peninsula?

In the Měnangkabau *pěrut* as far as we can see from Wilken's description managership by the *tungganai* is a fairly normal process probably restricted mainly to economic dealings with the outside world. In the Malabar *tarwād de jure* managership is pretty well *de facto* ownership. The *karnavan* has become a patriarch all but in name, limited it is true by certain moral considerations of what he ought to allot to the members of his *tarwād*, which they however have no means of enforcing, and limited as to his power of destroying or damaging the material basis of the *tarwād* by alienating its land without the consent of all the members.

In the Malay Peninsula with the progressive individualization of property a diminution of the powers of the manager appears to have gone hand in hand. On this point I very definitely have to join issue with Blagden. He says: "The females do indeed enjoy preferential privileges of usufruct, but are subject nevertheless to a sort of administrative control on the part of their brothers, or at any rate the eldest brother." I made a particular point of inquiring into this on my visit to Něgri Sěmbilan in June 1928. The Datoh Jelebu gave me to understand that men were only occasionally in the position of managers and then only as the attorneys of women and for the purpose of trade in produce. Males had no power of disposal of land: and the *ibu-bapa* of a *pěrut* was not a manager: his duty was to prevent alienation of land from the *pěrut* (Appendix XXXIX). Malay Assistant Suboh told me: "Land vested in women is in their possession and they have authority in respect of its produce. Men work on the land together with women, but the women apportion the proceeds.

If the men are unsatisfied with their share they can go elsewhere (i.e. emigrate)." He and Datoh Gempa Maharaja Zakaria explained that the extent of male authority is on the occasion of disputes. Uncles adjudicate, only in the absence of uncles, brothers. If these near relations cannot settle the matter the *ibu-bapa* is called in; if he fails then the *lĕmbaga* (Appendices XXVIII, XXIX).

It can therefore be taken as definite that in the Peninsula in the memory of men now between fifty and sixty years of age *managership* of matriarchal landed property by men has not existed; the only powers men of the family have possessed have been judicial.

In comparing different forms of matriarchal custom it is as well to bear in mind that social life is much affected by the grouping or dispersion of houses. Those who have been to southern India will have been very much struck by the contrast between the compact villages on the east coast, the whole rural population being concentrated in these very compact villages and radiating every morning to their labours over a country-side devoid of any buildings, and the scattered homesteads on the west coast. Each Nair house, also called *tarwād*, nestles in the groves in the centre of its own land.

There is the same contrast between Mĕnangkabau and Nĕgri Sĕmbilan conditions. I have not been to Mĕnangkabau, but from Wilken I take it that the Mĕnangkabau village is like the Batak village (which I have seen), compact like the Tamil or Telugu village but differing radically from them in two respects, in that the specialization of calling does not exist, and that single large houses standing in an open place take the place of the walled-in courtyards set along lanes and containing little hutments (usually three in the case of Telugu villages) built of mud and thatch. According to Wilken these compact villages, presumably like the Batak villages, enclosed within a fence or hedge, are divided up internally into wards, one for each *suku*, the *kumpulan rumah* (literally collection or gathering of houses) spoken of earlier.

These compact villages and *kumpulan rumah* are unknown in the peninsula. In Nĕgri Sĕmbilan I take it that before

the days of rubber and before British Administration the community owned three sorts of land: (i) permanent rice fields along the bottom of the innumerable winding valleys, irrigated from the streams by innumerable small wooden dams and water wheels; (ii) the orchards of mixed fruit trees in a narrow strip along each side of the rice fields, each woman's holding with her house set in the middle of it; and (iii) on higher land away from the rice fields temporary and shifting cultivation in clearings in the jungle, of rice dibbled in among the stumps and of tapioca and perhaps of sugar-cane. Pepper was also probably grown in clearings. Before the days of rubber it is possible that tapioca and pepper plantations were opened up and sold to Chinese much as rubber land was sold to Chinese in later times. Sago was and still is produced in small quantities from sago palms grown along the streams and along the edge of the rice fields, and sugar was produced from the sugar palms grown in the orchards.

Though these conditions are very similar to those in Malabar it is patent that they produced a favourable field for the progressive individualization of property which undoubtedly occurred.

CHAPTER III

THE DECAY OF MATRIARCHY

§ 1. GENERAL

I POSTULATE that the typical and most primitive form of matriarchy is communal, has in fact perfect joint family constitution, with the women as members. It is exogamic, the tribe not the joint family being I think the exogamic unit. The property is managed by the most senior woman. Membership of both tribe and family is decided purely by matrilineal descent. So far as property in children can be spoken of, children belong to the mother. Men never become chattels. But neither are the women the chattels of men, as stated in the *Encyclopædia Britannica*. In secondary forms of matriarchy in patriarchal communities the husband may become an adjunct of his father-in-law's house. Men even after marriage remain essentially members of their mother's family and have an obligation to labour on her rather than on their wife's land. Their mother's family has the obligation to provide them, in return for the labour which they give, with the means of livelihood and with luxury corresponding to the economic status of the particular joint family in question.

The ways in which matriarchy can break up are various. The different characteristics can to a great extent evolve independently. Among the obvious possible lines of evolution are, firstly, *the breaking up of communism.*

§ 2. THE DISINTEGRATION OF COMMUNAL OWNERSHIP

We have already seen that in the Malay Peninsula an atomization has occurred. A swing over to true individualistic patriarchy can also occur by *exaggeration of the function of the manager.* Raman Nair says: "The *karanavan* has almost complete control over the property of the *tarwād.* He collects

all the revenue and portions out the expenditure. His only limitation is that he cannot sell or mortgage any land without the signature of every member of the *tarwād*. Males and females should share equally in the revenue of the *tarwād*, except the *karanavan* himself who has a double share. But the apportionment is entirely in his hands (Appendix XLII). This account discloses another interesting fact, that so far as property can be said to belong to the members severally it has ceased to belong to the females only, the men have an equal interest with the women in material property. A man can leave his *tarwād* if he wishes to. He brings a case in court and his share of the *tarwād* property (*karnava suththu*) is given him (Appendix XLII). In the modern Malabar *tarwād* the only distinctive rôle of women left them is that of being the line of descent defining family: membership of a *tarwād* is matrilineal—but, apparently, neither mother nor father have a right to the children! Owing to a peculiar mingling and twisting of matriarchy and patriarchy a man has to own them, not the father, however, but the head of the mother's *tarwād*. A man's children belong to his wife's *tarwād*. They belong to the *karnavan*" [1] (Appendix XLII). An almost more peculiar fact is that this custom should be exactly paralleled in Mĕnangkabau. Wilken, describing what I take to be a "sub-family" of the *pĕrut* living in one large house, says: "The family therefore does not comprise husband, wife and children, but only the wife (or mother) with her children. At the head of this household stands the mother's eldest brother. This person, the uncle on the mother's side, the *mamak* [2] as he is called, has the right and duties of a real father in respect of his sister's children, his *kamanakan*. The father himself, as not belonging to the family, has no authority over his children. He in his turn,

[1] However, in the Native States of Cochin and Travancore development of the father's right has progressed so far that it has become customary for his acquired property to be divided equally between his *tarwād* and his children.

[2] I take it that the *mamak* bears the same relation to the *tungganai panghulu rumah* as this supposedly sub-family bears to the large group family inhabiting a large house (which alone should be called a household). I take it further that the *karnavan* of a Malabar *tarwād* is homologous with the *tungganai* and not with the *mamak*, so that the two customs are not quite, though nearly, identical.

at least if he be an elder brother, stands at the head of his *kamanakan*, his sister's children."

As has been hinted above, one of the possible lines of evolution of matriarchal communism is the production of a general unsexed communism while possibly retaining intact the principles of matrilineal descent and exogamic tribes.

We have seen that in the course of the evolution of the joint family, a distinction grows up between ancestral and acquired property, and ancestral property becomes by contrast more and more inviolate. This can be the case even when, as in the Malay Peninsula, communism has disappeared: the lien of the *pĕrut* and the *suku* still remain most powerful factors. The general principle is that ancestral property cannot change *pĕrut* or *suku*. In Cochin and Travancore the apparently unnoticed admission of men to equal rights with women, together with the right of partition, have led to the decay of this principle. There presumably remains, however, the *right of pre-emption* which is the weapon by which reversion to the joint family can be secured. I shall argue later that this right of pre-emption, leading as it does to the preservation of peasant proprietorship intact, is a most valuable custom and that further evolution leading to its disappearance is undesirable.

§ 3. THE WEAKENING OF THE MATRILINEAL FACTOR

We have considered lines along which matriarchal *communism* can undergo metamorphosis. The other main line of evolution or degeneration is the break up of the *matrilineal* factor itself.

Three other forms of descent are possible:

(i) the patriarchal (or paternal) in which descent is reckoned solely through the father;

(ii) the *parental* in which descent is reckoned through both parents; and

(iii) a peculiar sporadic form hybridized of matriarchy and patriarchy in which some of the children follow the mother, some the father.

I shall describe this last form first.

Wilken writes:

"It is the rule among the Rayat-Laut that the first, third and fifth children follow the mother and are therefore her heirs, while the second, fourth and sixth children belong to the father and are his heirs. If the last child born is an uneven number, so that the mother would have one child more than the father, then the first child is not allotted to either parent, but later, when he has come to years of discretion he can choose for himself whom he will follow."[1] "Originally . . . the matriarchal constitution of the tribe existed among the Macassars and Bugis, and the children exclusively followed the mother. But now the rule obtains that the offspring of a marriage belong in part to the father and in part to the mother, in the sense that the eldest child belongs to the mother, while the second follows the father; the third again goes to the mother, the fourth to the father, and so on. This way of distributing the children between two parents is called in Macassar *puwe bulo*, in Bugis *mapuwe awo*, both expressions meaning literally: 'splitting a bamboo exactly in two'. When there is an uneven number of children, the youngest child belongs to both parents equally; but the mother has the right of appropriating that remaining child, in return for payment of a sum of money called *pengayang* in the Macassar language and *papalappa* in the Bugis. This division of children also obtains in marriage between free-born persons and slaves. . . . It happens frequently that a free man marries a slave woman. In that event the eldest child belongs to the mother and is a slave. . . . If two slaves belonging to different masters marry, the same rule is observed: the first, third, fifth child, and so on are the property of the master of the slave woman; the second, fourth and sixth child are the property of the master of the male slave.

"The system of the division of children has been seen to exist, although by way of exception, among the Sawunese, the Pasemahs and the people of Bencoolen. Among the two races first named as we have seen, this takes place when no bride-price is paid and the wife remains with her parents: it is therefore a modified form of the matriarchal marriage. Among the people of Bencoolen it is otherwise. There, if no price at all has been paid, all the children belong exclusively to the mother; the marriage which gives the father a right to one at least of his children, is contracted on payment of a small wedding gift. So among the Macassars and the Bugis. Only when a bride-price has been paid has a father the right to half the children: as long as it is not fully paid in, the children are the children of the wife only. The same rule applies to the marriage of a free man and a slave woman: with the bride-price half the children follow the father and are free; *without* the bride-price all belong to the mother and are slaves. As is now the case among the people of Bencoolen . . . so presumably also among the Macassars and the Bugis marriage with division of children originally stood between marriage with the

[1] *Mal. Soc.*, p. 101.

fully paid bride-price, patriarchal marriage, where all the children belonged to the father, and matriarchal marriage, where nothing was paid, and the children belonged exclusively to the mother. The patriarchal marriage must since then have died out, while the matriarchal form seems now to occur only by way of exception and certainly exclusively among the poorer classes" (*Mal. Soc.*, pp. 49-51).

From this account of the "mixed inheritance" we should retain Wilken's hypothesis as to its origin; first matriarchy, then patriarchy growing up side by side with it with a new form of marriage, namely that with bride-price, then a mixture of the two forms, producing mixed inheritance, as a third intermediate variety, then the dying out of patriarchy leaving mixed inheritance and matriarchy.

It is also most worthy of note that "neither among the Macassars nor among the Bugis is exogamy found to exist nowadays" (*Mal. Soc.*, p. 49). It is possible that mixed inheritance can only arise among communities in which the unilateral force of tribal exogamy has not to be contended with.

This hypothesis is of particular interest in view of Wilken's contention that "cognatic (parental) relationship is a characteristic feature of the existence of endogamy" (*Mal. Soc.*, p. 71). Wilken states the converse of this hypothesis when reviewing the prevailing forms of kinship in the basins of the Jambi, the Indragiri, the Kampar, the Siak and the Rokan, regions which border on a coastal "parental" belt: "Naturally matriarchy is found most strongly pronounced where it is coupled with exogamy, where a common ancestress, from whom exclusively, and only in the female line, descent can be traced, forms the point of issue and the centre of the *suku* or tribe, and with it also of the family" (*Mal. Soc.*, p. 92). The argument seems unanswerable, and applies just as well to patriarchy. Unfortunately Wilken does not check it very far against facts. In this particular part of Sumatra information was apparently too fragmentary at the date he wrote. But we can take it as a sound working hypothesis that in the disintegration of matriarchy the subsistence or the disappearance of exogamy is a factor of immense importance in deciding whether the drift shall be towards paternal (*agnatic*) or parental (*cognatic*) kin-

ship. Later we shall see that in the Malay Peninsula the circumstances of the migration from Sumatra had an even stronger effect the opposite way, setting the drift towards parental kinship.

In this connection the following summary by Wilken of the characteristics of the three main types of kinship is of some interest:

"If we review our conclusions in the preceding pages, we see that among the peoples of the Malayan race, kinship is of three different kinds: *matriarchal* kinship, comprising exclusively descendants in the female line; *patriarchal* or *agnatic* (or paternal) kinship, comprising exclusively descendants in the male line; and *cognatic* (*parental*) kinship, comprising descendants in both lines. The matriarchal and the patriarchal or agnatic systems are found only among the peoples who practise or have practised exogamy; while cognatic relationship is a characteristic feature of the existence of endogamy, where the rule of marriage out of the tribe is unknown and preference is given to marriage within the tribe.

"135. As regards the law of marriage. Under matriarchy husband and wife do not come together to form a household, but the husband remains in his family and the wife in hers. Under the agnatic system of kinship, the woman, on payment of a bride-price, becomes loosened from her family tie, and passes into the family of her husband. To all intents and purposes she is bought for the bride-price; marriage is entirely *do ut dēs*, a purchase. When once a woman has entered her husband's family, return to her own family is no longer possible; as a widow she devolves upon one of the relatives, generally one of the brothers of her deceased husband [*levirate marriage*, G. de M.]. In principle divorce is not permitted. Lastly, among peoples practising endogamy, a man becomes, by marriage, a member of his wife's family, and a woman a member of her husband's family. Although the bride-price, as a rule, is still found, it lacks the character of purchase money. Husband and wife form a household and stand on a footing of equality.

"136. The law of inheritance is entirely in keeping with the constitution of kinship. Under matriarchy the inheritance descends exclusively in the female line. The children therefore inherit from the mother only, not from the father. The property of the latter devolves upon his brothers and sisters and upon his sisters' children. Where patriarchal or agnatic kinship exists, the inheritance descends exclusively in the male line. The children, in that case, inherit from the father only, not from the mother. The property of the mother devolves upon her brothers and sisters and upon her brothers' children. As a rule, however, right of inheritance is restricted to the male members of the kinship; because the female members have passed out of their family

by marriage and therefore cannot share in the inheritance. Since women do not inherit no one can inherit from them. In cognatic kinship, the succession to property takes place in both lines of descent. Children therefore inherit both from their father and from their mother.

"137. Of these three systems of relationship, the cognatic answers most nearly to our ideas; it is more distinctly characteristic of the Western nations, and is the system we practise. Yet the two other systems are also very generally distributed outside the Malay Archipelago. Except the peoples, who, like the Dayaks and the Alfuros of the Minahasa, have never known exogamy, or who, at a very early stage, abandoned it for endogamy, and so may be said to have come directly to cognatic kinship; and we can take it to be the rule that where cognatic relationship occurs, it has not existed from the beginning, but has developed on a soil of primitive patriarchy" (*Mal. Soc.*, p. 71).

In spite of the last sentence, however, there is abundant evidence of cognatic relationship developing, and having developed, on a soil of primitive *matriarchy*. For instance: In the basin of the Kampar, in particular Pengkalan Kota Bahru: "the rule that only the *kamanakans* can be a man's heirs is no longer so strictly applied; on the contrary a man's own children have about equal rights to the inheritance with the sisters' children; titles and dignities, however, still continue to descend exclusively in the female line" (*Mal. Soc.*, p. 81). In the basin of the Rokan: "In Mapat-Tunggal matriarchy is still found . . . coupled with exogamy. . . . At a man's death, his sisters and kamanakan inherit everything; except when there are children of the marriage, when half the property goes to the widow. It appears therefore that here a man's own children can already inherit from their father, if not directly, at any rate through the intermediary of the mother" (*Mal. Soc.*, p. 88). In Rantau-Binuang: "The *harta pencharian* here evidently denoting the effects acquired by both spouses in joint labour during the continuance of the marriage, and therefore their common property (in Nĕgri Sĕmbilan *charian laki bini*) are divided at the death of the wife between her husband and children (the children of course being entitled to their mother's portion): when the man dies the children, at least the boys, inherit everything, that is to say, all the individual property of the deceased; if they are girls, the inheritance is shared with the children of the man's sisters. Should there be no children, the *harta pencharian* devolves equally upon the relatives of both husband and wife" (*Mal. Soc.*, p. 89). In the upper basin of the Indragiri we find ourselves on the classic ground of matriarchy in Sumatra. . . . The Tiga Lurung district . . . here too matriarchy occurs, with this modification, however, that a man's own children and his sisters' children have equal rights in the succession to property" (*Mal. Soc.*, p. 90). In the Jambi-Batang Hari valley: "Titles and dignities pass to brothers, after them to sisters, and not infrequently directly to sisters. In offices of state the eldest son of the eldest sister is

the legal successor. But as regards succession to property, the *adat kamanakan* is already modified to the extent that *harta pencharian*, self-acquired effects, which are a man's individual property, go to his children. The same rule also obtains in Korinchi where too, the sisters' children, *penakan* as they are called, no longer inherit in the first place, but only in the absence of a man's own children" (*Mal. Soc.*, p. 91).

"From what has been summarized in the foregoing pages it appears that in various regions, by the side of maternal rights, paternal have commenced to develop: that matriarchal kinship consequently is in a stage of transition towards parental kinship. In the coastlands under foreign, especially under Johore influence, this transition appears to have fully taken place already" (*Mal. Soc.*, p. 94).

"So in the Eastern coastlands matriarchal kinship has gradually passed into parental; but it is otherwise in the South in the basin of the Musi. Except in the Semendo district, matriarchy has disappeared everywhere, but the constitution of the family, which has taken its place, is not the parental but the *paternal*, the patriarchal or agnatic" (*Mal. Soc.*, p. 95).

§ 4. THE WEAKENING OF TRIBAL COHESION

So it is clear that parental kinship can develop either from patriarchy or matriarchy. Matriarchy can develop either into patriarchy or parental kinship, and, as I have said earlier, it is the strength of exogamic tribal solidarity which decides largely between the two. It is a point which I shall have occasion to stress in a later chapter that where this tribal solidarity is strong parental inheritance cannot take place. For tribal solidarity demands that property shall be kept within the tribe, and that children shall belong only to one tribe, that of their father or of that of their mother. Children can therefore inherit only within one tribe—from one parent according to the system of descent. It follows that if membership of the tribe is determined matrilineally the children cannot inherit from the father, if patrilineally they cannot inherit from the mother.

Inheritance according to parental kinship among exogamic tribes must logically have been brought about by a certain

dimunition of tribal cohesion. We must therefore postulate this dimunition of tribal cohesion both in those parts of Sumatra in which the *adat kamanakan* is getting modified and in those states in the Malay Peninsula where inheritance by children of their father's acquired property is becoming possible. As we shall see later, tribal cohesion is reduced in the peninsula in a remarkable manner, by the seconding of men to their wife's tribe during the continuance of matrimony.

As to the *adat kamanakan* of which we have heard so much of above: it is in my view not "pure matriarchy" as Wilken calls it, but a first breakdown product of matriarchy. It is unfortunate that Wilken does not stress the difference between movable and immovable property; for the extension of the *adat kamanakan* to immovable property represents a very much more advanced stage of the breakdown of matriarchy than its extension to movable property. Tribal dignities cannot be owned or held communally; the extension of the *adat kamanakan* to them is therefore compatible with pure communal matriarchy. This custom can only extend to movable property if two conditions are fulfilled: a certain degree of individualization in ownership of property, and the possibility of at least those particular types of property being owned by men in contradistinction to women. The most suitable objects would obviously be weapons. The custom could extend to the inheritance of weapons while the ordinary fruits of land were still handed into a common stock. The extension to hoarded acquisitions, in the first place money, would represent a yet further development. The extension to immovable property, land cleared and planted by the deceased, would represent a yet very much more advanced stage of the development of the custom. It would mean that acquired property had ceased entirely to be communally owned during the lifetime of the acquirers. Only ancestral property could be communally owned under such a system. This would represent the greatest possible divergence between ancestral and acquired property: ancestral property *communally* owned by, prima facie, the *women* of the joint family, acquired property *individually* owned by either *men* or women.

I take it that in his descriptions of modified *adat kamanakan* this is really the stage to which Wilken is usually referring. I have, however, little evidence to offer that he can be including immovable property in his account of these modifications. Here is one such bit of evidence: "Among the chief individual possessions of the inhabitants of these (Tapung) districts, are the Sialang, trees in which bees have made their nests, and from which wax and honey are collected. Now these *sialang* pass at the death of the owner to the *kamanakan*" (*Mal. Soc.*, p. 83).

In view of the facts that in the Malay Peninsula individualization of tenure has proceeded as far as it has, and that at the present day the right of men to hold commercial acquired land must be admitted in most districts, it is a most astounding fact that the *adat kamanakan* should be, except for one solitary instance, non-existent. My explanation is as follows: All the headships of the matriarchal states and all tribal dignities within these states being elective and not hereditary the line of development was not laid down as it was elsewhere.

As we have already seen, however, this limited elective principle with its *giliran* was probably itself a development of a form of the *adat kamanakan* under which a chieftainship was not inherited by the eldest son of the eldest daughter but was filled by selection from among all the sons of all the daughters of the late chief. By an increase in the number of the descendants and of the derived *pĕruts*, the area of choice would have been very greatly extended. How the principle was introduced, however, that each *pĕrut* should have its equality in this matter ensured by being placed as it were on a roster, I cannot guess.

The question arises: did they not already possess this custom before they emigrated from Mĕnangkabau? Wilken says (p. 92): "Departures from the *adat kamanakan*, from the rule that a man's property passes not to his own but to his sisters' children, do nevertheless occur. In the Padang Highland (the Mĕnangkabau country), as we are aware, this *adat* is still strictly maintained." He says so there, but on pages 19–22 where he is treating of the Mĕnangkabau Malays he does not hint at this custom (except the converse phenomenon: the ownership of his *kamanakan* by the uncle)! I maintain there-

fore that both in Mĕnangkabau and after the migration in the Malay Peninsula the idea of inheritance by sisters' sons was not present. Now, although individualization of property according to my hypothesis set in at an early date, there was a very powerful counter-influence in *a denial of almost all forms of ownership to men.* This is in my opinion one of the most fundamental characteristics of matriarchy as found in the peninsula. The effect of this was that when the break up of community of property set in individualization occurred only among women. On my hypothesis that conditions subsequent to migration led to the formation of small "parental" households containing a woman, her husband and children, the tie connecting men with their nephews and nieces, the ownership of *kamanakan* by the *mamak*, would tend to disappear and there would be no reason on the birth of the right to own property among men, why their *kamanakan* should be more favoured than their children, rather the other way.

§ 5. THE EFFECT OF THE MIGRATION FROM SUMATRA

This effect, which I argue, of migration producing conditions favourable for the development of *parental* kinship is not exactly paralleled elsewhere, but there are instances of its leading to the growth of patriarchy. Following Wilken again, speaking of the basin of the Siak: "Matriarchy is not found . . . among the Mĕnangkabau colonists, the Anak IV Suku. When settling in Siak, the Mĕnangkabaus must therefore have abandoned their old *adat.* It may be that this was done under Johore influence too; but it can also be explained in another way. Emigrations where they occur on a small scale, may lead to patriarchy. We see this clearly among the North American Indians. Taylor relates that at the British Association at Montreal, the Hon. J. W. Powell mentioned from his own observation of American tribes, as a visible cause of the change from female to male kinship—the necessity of tribes spreading over the country for hunting. The husband removing his wife from the neighbourhood of her uncles and brothers in the matriarchal settlement, naturally gets her and their children into his own power, and a kind of patriarchalism

with male kinship sets in." According to my hypothesis there is no question of acquiring power, merely the growth of a new association of father, mother and children and the dissociation of the old unilateral association. The difference would account for the difference in result, in the one cause paternal, in the other parental, kinship.

It is a point of considerable interest that in the Malay Peninsula the tendency of development is towards parental kinship *in spite of the maintenance of exogamy,* which we have seen has a very powerful effect in setting the drift towards paternal kinship. It is clear that this factor of exogamy has been more than counterbalanced by the growth of the small parental household with the consequent diminution of tribal cohesion symptomatized by the seconding of the husband to the wife's tribe, both phenomena directly due to the circumstances attending the migration from Sumatra.

We have seen earlier how the concept of *acquired property* is a development away from the typical and presumably original communal form of matriarchy. It would be as well to emphasize that the property jointly acquired by husband and wife, called in the peninsula *charian laki bini,* [1] is a particular variety of acquisition which need not necessarily come into existence at all in the course of the degeneration of matriarchy. Wilken describes conditions in Mĕnangkabau in these words: "It need scarcely be said, that with the peculiar constitution of kinship, according to which husband and wife belong to two different households, common ownership of property during the continuance of marriage is impossible. As regards the *harta pusaka,* the mere fact that it never belongs to husband or wife individually but is always communal family property, militates against any such common ownership. The husband's own property remains therefore strictly separate from that of his wife. Only that which husband and wife have gained by joint labour, is their common property. Under this head, however, in many districts, is not reckoned the house, built by the husband and wife together or even by the husband

[1] *Sĕ-charian* in the state of Sungei Ujong.

alone during continuance of the marriage on the ground belonging to the family; such a house becomes the property of the family. Only rarely does one meet with the custom whereby such property is looked upon as the common property of the married couple, when a valuation is made and the wife usually obtains sole ownership by payment of half the valuation price to the husband or his assigns" (*Mal. Soc.*, p. 21).

It would seem that similarly in Malabar joint conjugal acquisitions did not exist. The reason would be similar: husband and wife living apart, each in their ancestral home, each a member of their own tribe. Again, I submit, owing to the peculiar circumstances of spreading out over a new, inviting and hitherto jungle-covered country, making clearings and homesteads in it in favourable spots, the old *pĕrut* community must have been broken up. Under pioneering conditions, except where so primitive as in a modern gold rush, conditions which are by their very nature temporary, as the absence of women would lead to the dyingout of the immigrants, men and women must keep together in "parental" groups. The conditions would be somewhat similar to those in the expansion of the wheat belt in North America. A division of labour between men and women is essential; division of labour means union between the complementary units, and in default of complete organized groups migrating together, it must follow that men and women settle down in pairs. This leads to an entirely new set of conditions. Ancestral property vanishes for the moment out of the picture: all property is acquired. Strict and cold-blooded logicians might argue that under those pioneering conditions, men doing all the heavy work of felling and clearing and building a house, women helping probably only in the lighter agricultural work and otherwise specializing in cooking, housekeeping and bringing up the children, the new plantations would be the man's acquisitions and the children the woman's. A more human outlook, however, on the nature of the division of labour must lead to the conclusion that the man in his heavy work in the field and the woman in the lighter but never-ending work

in the home are both contributing equally, that is up to the full powers of each of them, to the total result. And this is apparently the view tacitly assumed by the Mĕnangkabau immigrants and by more than one other race. *Charian laki bini*, therefore, was on the death of either party divided into two equal parts, on the death of the man, whether during the lifetime of the wife or after her death, his share went to his *waris*, his relations in the female line of descent, because of the then inviolable rule that property could not leave the tribe. The change of conditions had brought about the following developments: the matriarchal group inhabiting a large house had given way to small parental families each inhabiting their small house; for the first time in the history of the race self-acquisitions had become an important factor, joint conjugal acquisitions had made their appearance on the scene. Moreover, personal interest on the part of men in immovable property had appeared for the first time, only a temporary interest, however, a life interest, with reversion to his *pĕrut*, his joint family. But the very conservative ground-current of matriarchy carried on under these changes.

It is of interest that in the two systems in the Malay Peninsula rival to the matriarchal system, the Malay parental system, the *adat Tĕmenggong*, and the Arab system incorporated in Mohammedan law, both of which make a difference between ancestral (or personal) property and joint conjugal acquisitions, *pĕsaka* and *sa-pĕncharian* in the former case, *dom* and *sharikah* in the second, the woman is credited with the value of her work in the house. In the former case the division was half and half in the case of *sa-pĕncharian*, though a Perak order in council has fixed it at two-thirds for the man and one-third for the woman. Under Mohammedan law the latter fraction prevails, but the woman is always entitled to claim an equitable examination of accounts (*ujara misil*) and under this she has a right to be credited with every bit of work she has done other than bearing children. It would appear that the theory underlying this part of Mohammedan law was that a wife had sufficiently fulfilled her wifely function in satisfying her husband's desires and in bearing him children, and that she was entitled to have all other services including the suckling of her children performed by slaves. . . . In comparing the *Adat Pĕrpateh* with the *Adat Tĕmenggong* and the *Hukum Shara* in this matter it must, however, be kept in mind that the former is monogamous, the two latter polygamous.

§ 6. MARRIAGE CUSTOMS

It is unfortunate that in none of the books which I have at my disposal is there sufficient material for a comparative examination of marriage customs. There is the passage in Wilken I have already quoted in which he lays down the generalization that under matriarchy there is no bride-price, under patriarchy there is bride-price which is definitely a purchase of the bride, and under parental kinship, though the custom of payment of the bride-price exists, it does not amount to purchase of the bride. Now in Nĕgri Sĕmbilan bride-price is payable. There are moreover a number of forms of irregular marriage.

Custom acknowledges four classes of irregular marriage.

" (I) The marriage by surprise (*Tĕrkurong didalam*). When a man and woman are caught together inside the house, they are compelled by custom to wed. Their capture may be wholly fortuitous or the result of set purpose—either person having arranged a surprise. News of the capture is despatched forthwith to the tribal chiefs of man and girl, and the lover is not allowed to leave the house until his tribal chief has guaranteed payment of the price of guilt, the *adat sa-salahan*. . . .

" (II) The marriage by surrender (*Sĕrah mĕnyĕrah*). A man desirous of effecting a marriage in this way mounts the verandah of the girl's house (*panjat rumah*), takes up his position there, and refuses to budge. It is then open to the girl's relations to remove her and leave the man in undisturbed possession of the house, without light or food. If he persevere in his intention, he remains in the house dependent for light and sustenance on the charity of his own family: until the parents of the girl surrender to his obstinacy, and consent to the match. An elder is competent to sanction a marriage of this form, on payment of the ordinary marriage fee, together with the fine. . . .

" (III) The marriage by storm (*Mĕrumahi*). The existence of this form, the essential feature of which is the violence used to obtain the bride, guarantees marriage to a plucky man, despite his lack of property or physical attractions. The man forces his way into the woman's chamber,

lays hands on her. If he succeeds in carrying her off, either against her will or with her consent, he must leave the state. The woman in that event obtaining no marriage fee, for none is paid on her seizure, and if her parents invite the couple to return, they forfeit all claim to the fee.

" As an alternative to flight, the man may refuse to release the woman, and submit to whatever bodily castigation her relations inflict. If they fail to induce him to retire, he has won the right to marry. No action for criminal trespass will lie against the suitor, as this method of obtaining a wife is legitimized by custom. . . .

" (IV). The marriage with a condition clause (*Nikah Ta'alik*). At marriage of this kind the following clause is inserted in the formula (*Khutbah*) read by the *wali* : 'If the husband is absent on land six months, at sea one year, without message or tidings, divorce *has ripened of itself.*' . . . That safeguard is needed, and used, only if a foreign Malay is taken as a husband " (P. and M., pp. 82–6).

Judging from my limited knowledge I take it that these forms of marriage are essentially patriarchal in origin, and that they have probably filtered in through the intermediary of " parental " influences, themselves contaminated by patriarchal influences. Mohammedan law, in these matters of ritual, has probably had an unusually great influence, direct by supporting the forms directly sanctioned by it, and indirect in supporting parental as against matriarchal customs. The custom as regards divorce, to which matriarchal custom was not favourable, has become almost pure Mohammedan law. If I am right marriage custom in Nĕgri Sĕmbilan has become almost completely parental and patriarchal in nature.

I take it that matriarchal custom free from either marriage by purchase or marriage by capture mirrors a very much milder state of society than does patriarchal custom. If the hypothesis be accepted that matriarchal conditions generally preceded patriarchal conditions, it follows that the state of society must have deteriorated as regards essential peacefulness. The argument would be all the stronger were it proved beyond all doubt that managership of matriarchal joint families by

women was more primitive a condition than managership by men. It is difficult to imagine that even with a few years' state of war female would not have been replaced by male managership. This is only a suggestion as to a line along which research could with advantage be carried.

§ 7. THE TRIBAL STATUS OF MEN

Joint family conditions are in one respect radically different under pure patriarchy and matriarchy. In matriarchy membership of tribe or family is definite and final whatever the circumstances. In patriarchy, on the other hand, a woman on marriage severs her connection with her tribe and family so completely that it may even, under the most extreme forms of this constitution of society, be an offence for her to look upon her former relatives again.

In view of this very marked contrast between conditions in primitive matriarchy and patriarchy, it is a remarkable fact, which has hitherto not received the attention it deserves, that in the Malay Peninsula a man on marriage becomes seconded to his wife's *suku* and *pĕrut* and becomes subject to her tribal officers. There is what one might call a converse analogy with patriarchy.

This is a custom which could, on the face of it, not possibly hold in Malabar or in Mĕnangkabau, with both man and woman continuing to live in their own maternal homes. In Mĕnangkabau "the Malay husbands, as Verkerk Pistorius . . . quaintly expresses it, do 'chassez croisez' in the evening, when they leave their own home, to spend the night in that of their spouse" (*Mal. Soc.*, p. 19, Note). "In the daytime the husband comes to see his wife, assists her in her labour in the rice fields, and has his midday meal with her. So, at least in early days. Later his visits by day become less frequent and he comes in the evening to his wife's house, and remains, if he is a faithful husband, till the next morning" (*Mal. Soc.*, p. 19). In Malabar there is at the present day more of a drift towards "parental" conditions. "All the members of a *tarwād* live together in a common house, male and female. Men can go and spend the night in their wife's *tarwād*, or if

she is willing she can come and live in his *tarwād*. Each married couple have a room ; the bachelors can sleep in the verandah if there are not rooms enough " (Appendix XLII). Under neither of the conditions above described can it be imagined that a man should be seconded to his wife's family or tribe.

The new custom in the Malay Peninsula must have been connected with the formation of the new parental family unit of husband, wife and child. There is presumably a tendency for " parentalism " to incline one way or the other, towards either matriarchy or patriarchy. In modern Europe a woman always takes her husband's name. This is a relic of patriarchal conditions, in which she came under his authority. There being, however, no tribal constitution of society left in modern Europe the analogy does not take us very far. Consider conditions as they were in the Malay Peninsula in the early days.

It had hitherto been the rule that households, as wholes, came under the authority of some one tribal chief. It was not possible for two chiefs of the same rank to have *anak buah* (people subject to them) in any one household. With the migration a new type of household developed, the household containing a parental family. Allowing for the inertia of intellectual concepts, it followed that only one chief could have authority over its members: either the man's or the woman's chief. It is obvious that with this parentalism developing out of matriarchy the scales would lean in the direction of matriarchy and that the woman's *lĕmbaga* would have authority over the man. During the continuance of marriage a man was therefore seconded to his wife's tribe.

This custom is clearly an aberrant product of the development of matriarchy into " parentalism " (cognatic relationship). We should be right in expecting no trace of it where, as in Malabar, the drift is towards patriarchal, agnatic kinship, rather than towards cognatic kinship.

§ 8. THE PARENTAL JOINT FAMILY

There are unique elements in the particular resultant of the decay of matriarchy exemplified in the *adat* of the Malay

Peninsula. Among the most striking is the "parental joint family". This term is of my own coinage. The phenomenon it symbolizes has been described earlier. On the break up of matriarchal joint families I suggest that an entirely new type of joint family came into existence: that comprising a "parental" family unit of husband, wife and children. At marriage husband and wife pooled the whole of their property and enjoyed it jointly. The property they each brought to marriage would it is true be separated out at death or divorce, but even this would be enjoyed jointly during the continuance of marriage, and there was moreover the new category of "joint conjugal property," vaguely mirrored in other parental systems such as the *adat Tĕmenggong* and Mohammedan Law, but nevertheless representing an essentially new phenomenon.

I would suggest that this parental joint family more perfectly incorporates the essence of monogamy than any other system of individual law. If I am right in this suggestion that here is the germ for the development of the most perfect system of individual law, it is of the utmost importance that it be helped and protected in its natural development.

I can see it in the distant future dropping most of its remaining matriarchal features and becoming possibly the most perfect parental system. Too early a disappearance of its typically matriarchal features would almost certainly prevent such a development by reason of the over-emphasis of patriarchy in the system of law which would replace it, namely in Mohammedan Law.

PART III

DETAIL OF THE CUSTOMS IN NĔGRI SĔMBILAN AND MALACCA

CHAPTER I

THE STATUS OF MEN

We have already seen that the *adat* of the peninsula is marked by the very peculiar phenomenon of men being seconded to their wife's *suku* on marriage. There is no particular ceremony required to effect this; marriage itself effects it.

It is arguable that rupture of the tie requires the peculiar ceremony of *jĕput* (invitation), though, as tribal chiefs do not need to be present and the ceremony is not necessary on divorce, the sounder view would appear to be that the ceremony has significance purely as between the *waris* of husband and wife. On the occasion of the feast which takes place on the 100th day succeeding any person's death, in this case the wife's, the man's relations go in procession to the deceased woman's house with trays of chewing materials (betel leaf, areca nut, gambier and lime). The settlement of property, which we shall describe later, takes place, and his *waris* invite the man home to them. He does not as a rule actually follow them home at once, but he accompanies them as far as the stile over the fence enclosing the *kampong* as a sign that he accepts. The women are technically offering him the maintenance which his wife owed him during marriage, the maintenance which under a more primitive phase of matriarchy the joint family as a whole owed him.

The peculiar problem arises, what is the status of a tribal chief, whose authority is over his own tribe, not his wife's? The answer was given me by the Datoh Jĕlĕbu: "The whole household of a *lĕmbaga* is freed from the jurisdiction of the *lĕmbaga* of his wife's *suku*." (Appendix XXXIX.) I take it that he himself has the authority of a *lĕmbaga* over his wife: a peculiar twist towards patriarchy!

CHAPTER II

THE SYSTEM OF RIGHTS AND OBLIGATIONS

THE point has already been stressed that under the joint family system certain " members are co-parceners, that is persons who on partition would be entitled to demand a share, while others are only entitled to maintenance " (Mayne, p. 257). In the Malay Peninsula the women would correspond to the former category, the men to the latter. With the disappearance of corporate ownership on the part of the women the right to maintenance on the part of the men has nevertheless remained. The result is that ownership of property, in particular of ancestral property, on the part of women entails an obligation to provide the means of livelihood to the men. This is one of the main principles to keep in mind in all that follows.

There is another aspect to the relations of men and women towards each other: the obligation of men to work for their women-folk without other reward than maintenance except for an interest in joint conjugal acquisitions; and the woman's house for instance is not included in this category.[1] If there be more than one daughter it is incumbent on either her father or her husband, usually the latter, to build her a house in the ancestral kampong. The relative status of men and women is well described by Parr and Mackray:

" It would appear, then, at first sight, that the position of a male even in his own family circle is subordinate to his sister's to a degree inconsistent with equity. He gives his labour in the rice swamp in which, under strict customary law, he can never acquire a proprietary interest. He brings to his mother's home some portion, at least, of his earnings

[1] Provided she leaves one house only. If she leaves two houses, one of which has been built by the man on acquired land, it ranks as a conjugal acquisition.

as a bachelor, and should he die unmarried and in the care of his mother or sisters, what property he may possess becomes theirs. But in practice his position is not without compensation of a substantial kind.

"The male is not denied by custom all the usufruct of ancestral property. The fruit of trees he plants in the ancestral kampong is his to sell or enjoy. When he leaves his home to marry or search for fortune (*mĕnchari untong*) in the world, custom allows him to take away with him cash or kind, a share of his mother's property (*hĕrta tĕrbawa*),[1] though it grants at the same time to his mother a lien on that property on his divorce or death.

"If misfortune is all his bachelor life brings him, then his family is liable for his debts, unless, indeed, he can find a woman willing to marry him thus encumbered.

"These duties of a mother to her sons arise from the principle that the holder of ancestral property is responsible for the life and blood of all members of the family. Life and blood, says the custom, belong to the *waris*.

"The applications of this tenet are manifold. Interpreted literally, it explains the custom of substitution as the penalty for murder, or even for slayings that would now be classed as homicide or justifiable homicide.

"Before the sway of the *adat* was tempered by western ideas of justice, if a tribesman by slaying a member of another tribe, caused depreciation of the assets of that tribe, the balance between the two tribes was readjusted by substitution —(*balas*). A member of the slayer's family was given to the victim's tribe, in exchange for the slain. That substitute,

[1] I do not know from where Parr and Mackray can have got hold of this term. It is frankly not understood in most places, and is said to be the equivalent of "pĕmbawa" in others. My interpretation of this passage is that P. and M. seek to make a distinction between *tĕrbawa* as including ancestral property only and *pĕmbawa* as including his acquisitions either during bachelordom or a former marriage. But my researches have disclosed the facts that *pĕmbawa* is the only term used throughout the states subject to the Adat Pĕrpateh including all property brought by the male at marriage, or even acquired later by inheritance or gift, and moreover that no ancestral property is brought by the male. Inche Suboh relates: "A man marrying a rich woman must bring property. If he did not bring property the woman would be reluctant and his own womenfolk ashamed. The property which the man brings is, however, not land, but money, rings, anything that has price as buffaloes and goats" (Appendix XXVIII).

who was normally of the same sex as the slain, was selected by the tribal chief, and passing into the tribe of the slain, became heir to the same rights and privileges as persons born into that tribe.

" This rule discovers the standpoint of tribal custom. The tribe, not the individual, is the unit of consideration. A murdered man was just so much dead loss to his tribe, which could not balance its accounts by recording the fact of a death in another tribe." [1]

" The second application of the principle is seen in the obligation of the holder of ancestral property to pay the debts of the bachelors of the family. Under Malay rule an insolvent debtor became the slave [2] of his creditor; he paid his debts in his body. The settlement of his debts alone preserved his free life, and hence became a duty of his mother's family. The obligation to payment extended not only to the private debts of the bachelor, his unpaid bills, his less happy speculations, and his losses at the gaming table,—but also to the debts known as debts-of-custom (*utang adat*).[3] A man holding an office under the tribal constitution (*orang bĕradat*) exposes himself, as has been shown in the chapter dealing with the constitution, to customary fines for actions and omissions connected solely with his official position. Failure to meet the fine involves his deposition, and casts a slur on his family. A like taint (*chachat*) on the family results from failure to carry out, in full detail, the prescribed ritual at the funeral of a constitutional official. The holder of the ancestral property is therefore bound to step into the breach and save, by payment of these debts, the official life of the peccant bachelor, or maintain by means of the ancestral property the inherited rights (*pĕsaka*) of the family." [4]

" Again, in execution of the same principle, the inheritor

[1] P. and M., pp. 70, 71.

[2] The debt slavery which P. and M. treat as having lapsed still leaves traces. I have been told that former debt slaves are still spoken of as the *hamba* (slaves) of so and so, and that the latter still exercises his former right to the extent of calling upon his slave to assist in menial work on the occasion of any festival he may give. It needs further research to decide whether private and particularly gaming debts are payable out of ancestral property.

[3] The *utang adat* have lapsed.

[4] P. and M., pp. 72, 73.

of the ancestral property is bound to provide a home for the males of the family before marriage, on divorce,[1] or in sickness. The tribesman may wander afar secure in the knowledge that his ancestral swamp will be tilled, and the garden tended by his mother and sisters, to whom he can always return for shelter, maintenance, and assistance. If he comes back only to die, he has still the cold assurance that his funeral, and all contingent feasts, will be duly provided out of the family estate.

"But the duties which the possession of ancestral property entails on the holder are not confined to the preservation of the 'life and blood' of the males.

"She is responsible also for the expenses known as the debts of inheritance (*utang persaka*). These fall under the following headings:

"(1) Expenses of marriage, or fines incurred in connection with marriage. All forms of irregular marriage entail on the groom the payment of a fine to the tribal chief, or the provision of special garments, and presents.

"(2) Expenses of burying the late holder of the property and of feasts in connection therewith.

"(3) The purchase of the title of Haji for the deceased parent. (*Bĕli Haji*).[2]

"(4) Expenses of the feast known as '*tamat kampong*'. This feast takes place once a year at the family grave-yard, and is of the nature of a family reconciliation—a burying of all the year's little differences between brother and sister, parent and child.

"(5) The expenses of a religious education (*mĕnuntut*). This charge is only due in respect of education in a foreign country, and is rarely incurred in Rembau. But the departure of a tribesman to Kelantan to acquire religious instruction is a common event in the state of Naning.

[1] The maintenance of sons continues to the present day. Che Omar (S. Ujong) says: "When a man married to a rich woman divorces her he falls into extreme poverty. But he meets with kindness on the part of his *waris*; they look after him" (Appendix XLII).

[2] "The purchaser of the title of Haji for a deceased relative gives money (minimum $20, usually $40) to a pilgrim. Arrived at Mecca this agent pays the money to the Sheikh, who buys the robe and turban of a pilgrim, and deposits them in the mosque at Mecca, offering up the customary prayers."

"(6) Assistance towards the cost of the pilgrimage to Mecca.

"The holder is further bound to maintain the ancestral property intact. This obligation, it is true, is implicit in her position as a tenant, but calls for attention as the ground on which the daughters base their demands to a division of the property during the life-time of their mother. Veneration for years is a sentiment perhaps not wholly without the range of Rembau experience, but filial affection for an aged relative is conspicuously absent from Rembau practice. The advanced age of the mother is accepted as proof positive of her inability to perform her duty of preserving the property intact, and she may be forced to transmit her interest.

"In the event of this transmission, the aged holder is commonly allowed to retain in her own name a small plot in the ancestral rice swamp to guarantee her burial expenses.[1] She will speak of such a plot as her shroud (*kĕpan*). The relative who actually pays those expenses becomes thereby entitled to the land so reserved as a guarantee, but is bound, should she enjoy the usufruct of that land pending the holder's death, to feed and support her aged relative.

"The sale, or mortgage, of ancestral property outside the family or tribe is strictly forbidden, as contrary to the principles underlying the possession of tribal property. Alienation is permissible only if necessary to the performance of such duties of the holder of the property as the payment of the debts of custom or inheritance. The sole exception to this rule is a concession to religion.

"A holder of ancestral property, to which no immediate heirs exist, may dispose of that property to pay for pilgrimage to Mecca. She must, however, grant an option of purchase to her tribe before seeking a buyer elsewhere. Under Malay rule, if a buyer was found in another tribe, the tribal chiefs of either party met on the land, beat the bounds, and planted posts to mark it off, before the price was paid."[2]

[1] "Instead of reserving the plot, it may pass directly as a gift (*pĕmbrian*) to a relative guaranteeing the burial expenses."

[2] P. and M., pp. 73–5.

CHAPTER III

ANCESTRAL PROPERTY

§ I. GENERAL

FROM the very start we must be on our guard owing to the ambiguity of the Malay word *pĕsaka*. *Hĕrta pĕsaka* is the Malay expression for " ancestral property ", but the word is used more or less loosely with qualifications even in this sense, and it is also used simply to denote the fact that property has been inherited. *Any* property inherited from the mother is called *pĕsaka ma'*, and *any* property inherited from the father *pĕsaka bapa'*. The word is also used in the sense of " heirloom ". By further extension the word can include the inherited rights of a family and even the major and minor chieftainships of a tribe.

The qualifications to the term *pĕsaka* appear to be strictly local. The Datoh Jĕmpol distinguishes between two categories *pĕsaka pada limbaga* (ancestral towards the tribal chieftain) and *pĕsaka pada hĕrta* (ancestral towards property)—on the surface meaningless terms, particularly the latter (Appendix XL). The category represents true ancestral property, which can only be held by women. The second includes land inherited by sons and does therefore, apparently, not mean ancestral at all—unless perchance the son's *suku* have a right of pre-emption over it, a fact which I have not ascertained. The Datoh Jelĕbu distinguishes between *pĕsaka adat* (inheritance according to the custom (?)) and *pĕsaka mas* (inheritance of gold (?)). He says : " Land and weapons become *pĕsaka adat,* buffaloes and goats become *pĕsaka mas,* and can be sold to anyone. The custom concerning them is like that regarding acquisitions " (Appendix XXXVIII). It is plain that *pĕsaka mas* has nothing to do with ancestral property. I have not pushed my inquiries far enough to ascertain whether the *pĕsaka mas* of Jelĕbu and the *pĕsaka pada hĕrta* of Jĕmpol are identical ; if they are they have neither of them anything to do with ancestral property : *pĕsaka pada limbaga* and *pĕsaka pada adat* become identical also and mean nothing more nor less than " ancestral property ". [1]

[1] In Sungei Ujong they speak of two sorts of *pĕsaka, pĕsaka bagi Undang* and *pĕsaka bagi hĕrta.* But the former category comprises tribal dignities,

The various categories of ancestral property above-mentioned are rarely met with elsewhere. Malay Assistant Suboh (Naning and Rembau) says that the expression *pĕsaka mas* is not used; *pĕsaka adat* on the other hand refers to property which has descended at least from a great-grandparent and can only be applied to weapons. It refers therefore to heirlooms which have become ancestral.

This confusion can be boiled down to two theories which vaguely underlie the conscious thoughts of these Malays: (i) that certain types of property do not on inheritance become ancestral, and (ii) that inheritance through a succession of generations enhances the quality of being ancestral. It is almost certainly owing to the fact of the development of the custom in the last half-century that these theories themselves are confused and their application varies in different states. Moreover, I am not clear to what extent they conflict with each other.

I would hazard the following general rule, subject of course to local variations, as to the time when acquired property becomes ancestral. Orchards and rice fields, which are not over the greater part of the area inheritable by men, become ancestral on inheritance by the daughters of the original acquirers. Plantations on the other hand, even if inherited by daughters, and spoken of as *pĕsaka mak* or *pĕsaka bapa*, are not in fact ancestral; they are at liberty to sell or charge them as they like. They become ancestral only on being inherited by the grand-daughters of the original acquirers. Furthermore, no property can become ancestral on being inherited by a collateral, nor can it become ancestral on being inherited by a man.

I shall run through the evidence rapidly:

REMBAU.

Appendix IV: "On the death of the wife joint conjugal property goes to the husband. It first *becomes ancestral on being inherited by the grand-children.*

the latter only property. "There is only one kind of *pĕsaka hĕrta*, including orchard, rice field, house and weapons. My impression is that buffaloes and goats are not included. If kampong, rice field, house or weapons are lost trouble is raised by the waris. If a married couple lose livestock, however, the waris do not usually make a fuss" (Che Omar, Appendix XLI).

Appendix XXII, 12–15 (Inche Baker): Acquired property given to a son is inherited by his children if he has any. "*So far as it continues to go down from father to son it cannot become ancestral.* Property originally acquired by a woman's father becomes ancestral on transmission to her daughters, i.e. *to the grand-daughters of the original couple.*"

Appendix XXIII. The ex-datoh Rembau: "A mother's acquisitions become *pĕsaka* to the children. . . . The land becomes more strongly ancestral with each succeeding generation."

Appendix XXIV. Datoh Mosā Saïd: "Land becomes ancestral on being transmitted to the second generation."

Appendix XXVIII. Sitam and Suboh: "Plantations on being inherited by daughters always become ancestral. Even in spite of their not desiring that they should become ancestral they become ancestral nevertheless. This applies to rubber estates also: on inheritance by daughters they become ancestral, though they can also be inherited by sons—in which case they do not become ancestral."

Appendix XXX. Datoh Gempa: Rice fields and orchards cannot be inherited by men, plantations can. Rice fields and orchards on being inherited by children cannot be sold; plantations can. Plantations become ancestral on being transmitted to the great-grandchildren.

JOHOL.

Appendix XXXV. Datoh Gemencheh: "Acquired land is not ancestral when held by the children, they can sell it or charge it. But it is ancestral when it has gone down to the grandchildren."

Appendix XXXVI. Penghulu Ayer Kuning: "Kampong and sawah on being transmitted to the daughters become ancestral property. Rubber land on the other hand always remains a commercial commodity and never becomes ancestral; it is always bought and sold."

Appendix XXXVII. Datoh Johol: "Property becomes ancestral on going down to the children. Rubber estates only are excepted (The Datoh Ulu Muar and Inche Mohamed Pilus insist that rubber estates are not an exception: the Datoh Johol gives way)."

NANING.

Appendix XXX. Dĕmang Asah: "Joint conjugal acquisitions become ancestral even when inherited by sons. They cannot sell them to anyone but their *waris*."

Appendix XXXII. Datoh Naning: "Property becomes ancestral when it is transmitted without money or work being involved. If for instance a couple die leaving only one piece of land which their children have to charge to raise money for the funeral expenses, and the children then pay off the charge by winning money in some way or other, that land has really been won back by their work and is not ancestral." (This may quite possibly be generally applicable: a provision to ensure that in

the case of money having to be raised to pay funeral expenses it can be raised in the best market.)

SUNGEI UJONG.

Appendix XLI. Inche Omar: Acquired property in the hands of sons or daughters, though called ancestral, can be sold: it is not yet properly ancestral. Only when it has descended to their children does it first become properly ancestral and cannot be sold out of the tribe.

Theoretically pure matriarchy is characterized by joint family constitution, all property, including ancestral, being held by the female members in severalty, alienation of such property out of the joint family and *a fortiori* out of the tribe being prohibited except under the direst necessity, males having a right to maintenance. There would be no inheritance of property. The state of affairs is described clearly by Mayne: "In Malabar and Canara, when partition is not allowed, the idea of heirship would never present itself to the mind of any member of the family. Each person is simply entitled to reside and be maintained in the family house, and to enjoy that amount of affluence and consideration which arises from his belonging to a family possessed of greater or less wealth. As he dies out his claims cease, and as others are born their claims arise. But the claims of each spring from the mere fact of their entrance into the family, not from their taking the place of any particular individual" (p. 340). All the evidence points to the above description having at one time applied exactly to the Mĕnangkabau Malays. The present *adat* in the peninsula is therefore the lineal descendant of those conditions.

The changes which have taken place have been two-fold: (i) *the growth of a new class of property, acquisitions,* which, at first, were individual property only while in the hands of the original acquirers (and, in the very beginning, can hardly be said to have been the subject of individual *ownership* at all), and which, on the death of the acquirer, were merged in the common fund, and, later, to varying extents, became distinct individual property. The other category, ancestral property, was that which continued to follow the old communal *adat*. (ii) Then, under the influence of acquisitions, *the right*

of partition of ANCESTRAL PROPERTY *grew.* A right of individual ownership of ancestral property came into being. At this stage the whole of each joint family would have been a corporation, the female members of which would on partition be entitled to a share, while the male members would have been entitled only to maintenance.

At the present day we have seen from Parr and Mackray that daughters can demand partition when their mother becomes aged. I think the following description by Inche Suboh conveys the best and the most trustworthy picture: "When I was a boy there were no titles for land in Naning. Land was not owned by *pĕruts* (*kumpulan pĕrut ta menjadi tuan*)—with the exception of forest orchards (*dusun*). If there was no dispute, however, *kampong and sawah were jointly owned by a woman and her daughters.* When several daughters had married, usually, but not invariably, a partition was made."

The saying "*tukul lanta', bertahil ĕmas*" (hammer in boundary posts, weigh out gold) refers to this partition. It was carried out with the help of the tribal chief (*limbaga*) and the head of the pĕrut (ibu bapa) (*bĕrchampur limbaga dĕngan ibu bapa'*).

Parallel to the phenomenon of partition of joint family ancestral property is the phenomenon of the partition of joint conjugal acquisitions characteristic of the peninsular "parental joint family". Malay Assistant Bakar says on this subject "during the life of both parents *charian* property in any quantity can be given to grown up children who have, or are about to, set up house for themselves. Such property is left out of count at *jĕput,* charian property is never given to small children for the reason that *buda' kĕchil kandong pada ma' bapa' lagi* (little children are still dependent on their parents).

The essential point which I want to make is that at this stage ancestral property was not the property either of the *suku* or of the *pĕrut vested in the women of tribe,* but the property of a restricted joint family, liable to partition into strictly *individual shares,* subject however to the *right of preemption* on the part firstly of members of the same *pĕrut,* and, in default of exercise by them, by members of the *suku.*

(No encumbrance or alienation of such property could take place except for grave reasons, and subject to the right of members of the *pĕrut* and *suku* to have first option at a fair price. This matter has already been dealt with on page 85 and 86.)

The only doubtful points remaining are as to the time when the individual property of a woman becomes the joint property of herself and her daughters, or as to whether at the present day there is any particular object in describing the mother and her daughters as a joint family. I am inclined to think that, as the daughters share the maternal roof till they marry and are decidedly under her sway till then, the property is till that date the individual property of the mother. When a daughter has a separate house, and till partition takes place, it is joint family property.

§ 2. INHERITANCE OF ANCESTRAL PROPERTY

" The rule for succession to ancestral property may be thus formulated :

" Ancestral property—real and personal,—descends to daughters or their direct descendants, *per stirpes* not *per capita*.

" In the event of the holder of ancestral property dying without issue, the inheritance reverts to the nearest living female relative of the same family the *waris yang kadim*—normally sisters or nieces, *per stirpes*. In default of these, or should the nearest relative refuse the inheritance, to which by custom she is entitled, ancestral property descends to that relative in the tribe, even if not the nearest of kin, who had supported the deceased holder in her old age, provided that nearer kinsfolk had not offered her a home. Should the deceased holder have entirely supported herself, the property would descend to relatives of the degree of first cousins (*sa'anak dato'*) or, in default thereof, to more distant cousins (*sa'anak nenek* or *moiang*)." [1]

My impression, though I have recorded no evidence on the point, is that something of the same principle applies even

[1] P. and M., p. 69.

as between sisters: those who have lived upon and maintained the ancestral *kampong* having a prior right as against any daughter who has established herself elsewhere. This prior right may be the basis of a claim only to a larger share of the holding, or even to exclusive ownership. This phenomenon is based upon the recognized duty of maintaining ancestral property. The occupier of ancestral property has therefore a duty imposed upon her not only of maintaining her male relations but also the ancestral property itself. This is one of the outstanding points in favour of the *Adat Perpateh.* The phenomenon can be interpreted not so much as a question of inheritance but as one of partition of joint family property. Obviously the usual partition between a mother and her daughters cannot have taken place, or must at least have been incomplete, if there was any question of inheritance. We can put it that the partition had been postponed till the death of the mother. The manner of partition would be an expression of the fact that by not carrying out the obligations imposed upon her by the *adat* a woman ceased wholly or in part to be a member of the joint family. Subject to what is said above, sisters share equally. Should one of a family of sisters predecease her mother leaving children of her own, the share of the property to which she would have been entitled goes to those children.

To continue with Parr and Mackray's account:

" It is clear then that the failure of female heirs is an extremely remote contingency. The custom, however, which debarred males from inheriting ancestral property, did contemplate a failure of heirs. Ancestral property to which no female heirs existed was known as 'suspended inheritance' (*pĕsaka gantong*) and male children or agnate relatives might memorialize the Undang for permission to dispose of such property.

" To the denial of inheritance to male children in ancestral property the custom admits one exception. Weapons or male ornaments and clothing, the males of the family may receive—but as a concession, not as a right. Such benefits, known as

'the path of the eye'[1] (*chendĕrong mata*), are granted as a sign of the blood connection between the female inheritors and their brothers."[2]

§ 3. THE OBTAINING BY MEN OF A LIFE-INTEREST IN ANCESTRAL LAND BY WAY OF INHERITANCE

"The disability of the male to succeed to ancestral property has been modified by late usage. At a meeting of the Nĕgri Sĕmbilan State Council in 1899 it was decided (with respect to Rembau) to permit to a male life-tenancy of ancestral lands in default of female heirs of the same degree. Under this ruling, if the holder of the ancestral property leave issue one son only, that son is entitled, *should he press his claim to succeed to the ancestral lands, held by his mother, as tenant for life*. At his death, those lands revert to his nearest female relative in the tribe. To ensure this ultimate reversion to the female heirs, the name of the person entitled to the reversionary interest in the ancestral property is now inserted, together with that of the male life tenant, in the customary title for the land."[3]

That is the state of affairs in Rembau. Turning to the statements it will be seen that Dĕmang Asah of Alor Gajah (Adat Naning), the Pĕnghulu of Ayer Kuning (Adat Johol) and the Datoh Jĕmpol say that a son can never obtain a life interest. The Datoh Johol, the Datoh Ulu Muar and Inche Mohamed Pilus (Rembau) agree that originally a son could never obtain a life interest, but maintain that the *adat* has now changed. The Datoh Naning says that a son can obtain a life interest.

The wisest interpretation would be to admit a general change

[1] In the State of Naning, where the same custom obtains as in Rembau, the *chendĕrong mata* takes the shape of a fruit tree reserved for the male in the ancestral *kampong*. I myself have never come across this term "*chendĕrong mata*," and when I have asked its meaning I have received rather unsettling replies: for instance, that of the Penghulu Ayer Kuning (Appendix XXXVI): "The term '*chendĕrong mata*' is remembered but has never been used in my time. It referred to a gift as from an adoptive mother to an adopted child." Furthermore the custom, as I understand it, is for ancestral as distinguished from acquired weapons to go to a man's nephews rather than to his sons, or, to be still more exact, to his sisters and from them to their sons. It is the nearest approach to the *adat kamanakan* in the peninsula as applied to property (Demang Haji Latib, Appendix XXXI).

[2] P. and M., p. 69.

[3] P. and M., pp. 69–70.

in the custom throughout Malacca and Nĕgri Sĕmbilan, subject however to exceptions in particular localities. The chief exception would be Jĕlĕbu, where even *charian* land cannot be inherited by a male. Jĕmpol and probably the remote parts of Johol are also probably exceptions, but the statements I have taken need corroboration.

In Rembau, Johol and Ulu Muar it can be taken as a general rule that a son cannot obtain a " life-interest " if he has a sister. If he has no sister however he can obtain a life interest. This rule applies strictly *per stirpes*. That is to say that if a man's mother dies before his grandmother he inherits from his grandmother the share which his mother would have inherited from her (Datoh Johol's statement, Appendix XXXVII).

In Naning a mere only son cannot obtain a life-interest according to the Datoh Naning. He has apparently at no time a right to this interest and can only obtain it with the concurrence of the *waris*, if he has neither sisters nor female first cousins.

§ 4. SALE AND CHARGING OF ANCESTRAL PROPERTY

My notes are rather meagre on the subject of the purposes for which ancestral property may be sold or charged (in the first case within the same *pĕrut*, failing a bidder at a reasonable price in that in the same *suku*, failing that again in the open market). It appears to be for " *hutang pĕsaka* ".

In one of my own cases, L.C.49/1920, the Datoh Perba Salleh said that ancestral land might be sold to pay funeral expenses (in this case of the owner's father). There being no purchaser offering in the same *suku*, leave was given to sell in the open market.

Sale for the purpose of the pilgrimage to Mecca is mentioned by the Datoh Johol supported by the Datoh Ulu Muar and Inche Mohamed Pilus, Datoh Pĕchat Rembau and Dĕmang Haji Abdul Latib (Naning).

CHAPTER IV

ACQUIRED PROPERTY

§ 1. GENERAL

I HAVE already in the introduction given an idea of the difficulties attending the definition of the customary law affecting acquired property. There is direct contradiction between expert witnesses. The same witness gives conflicting evidence in different cases at different dates, e.g. Datoh Gempa in Land Case 39/13 (Appendix II) and his statement to me in 1920 (Appendix VI).

The appended précis of evidence as to transmission of property on divorce and death discloses the utmost divergence and conflict of ideas on most points. It seems impossible in most cases to arrive at general ideas by picking out points common to a majority of deponents, by a process of mere averaging or by sorting out ideas geographically. It becomes in fact necessary to seek out the underlying principles and see whether by this means some order cannot be introduced into the chaos.

Acquired property can be classified into two main groups, that is:

Charian Bujang (bachelor acquisitions) and

Charian Laki Bini (joint conjugal acquisitions—or jointly acquired property).

The first comprises any property acquired by either sex before marriage or between succeeding marriages or after divorce.

To whatever extent one or other partner has been solely concerned in production of any individual bit of property during matrimony that property is nevertheless strictly joint property. Under any system of registration of title which endeavoured strictly to mirror interests in land, land so acquired should not be registered in the name of either party alone, but in the names of both parties as partners.

These joint conjugal acquisitions of the Malay Peninsula constitute in fact a radically new phenomenon in the history of matriarchy. They are a form of property which is strictly speaking not matriarchal at all in character. Man and wife sharing equally in them, they are *parental* rather than *matriarchal*. We could with some justice speak of man and woman constituting a *parental joint family*, and of the total property in the hands of the family as *parental joint family property*. In a narrower sense parental joint family property would only include joint conjugal acquisitions. Understood in its wider sense the constitution of parental joint family property might often be exceedingly complex, including ancestral and acquired property brought by either party as well as their subsequent joint acquisitions. The right of complete partition would be conditional on divorce. Incomplete partition would take place on any of the children being set up in houses of their own.

The most characteristic part of the joint family property would be the *charian laki bini*. Partition of this is thus described by Inche Bakar. "During the life of both parents *charian* property in any quantity can be given to grown-up children who have set up, or are about to set up, house for themselves. Such property is left out of count at the *jĕput*. Acquired property is never given to small children for the reason that *buda' kĕchik'* : *kandong pada ma' bapa' lagi* (little children are still dependent on their father and mother). The claim of male and female children on the *charian* property of their parents is not equal. A son can only get a share with the consent of the daughters. In the case of the sons the property is his *pĕmbawa*, which he can neither charge nor sell.[1] In the case of daughters the property is *hĕrta dapat dĕripada charian bapa' dia* (property obtained from their father's acquisitions). Daughters can charge or sell this property" (Appendix XXI).

Charian property includes, further, gifts to children of property acquired by one or other or both parents, and in certain cases even property inherited by them from their parents.

On marriage all property brought by the man is included in his "*pĕmbawa*" (bringings), by the woman in her "*dapatan*" (gainings).

It is an absolute rule that this property must be declared at marriage,[2] and that at divorce or death they must be again declared and examined, anything which has been frittered away being made good before the distribution of jointly acquired property is proceeded with.

[1] I would introduce the qualification that if the property were rubber land it would not be subject to these restrictions.

[2] See, however, the qualification in Appendix XLI, under *pĕmbawa* ; livestock is usually given to the bride by her parents *after marriage* and is *not normally declared*.

A new principle which stands out from my researches is that an improvement to acquired, as distinct from ancestral, property stands on the same footing as a new acquisition of the same date; thus for instance if *charian bujang* (bachelor acquisitions) has been developed during marriage, the value of the improvement ranks as *charian laki bini* (jointly acquired property).

It is most unfortunate that we have at our disposal no knowledge of the customary law as it affected acquired property among Mĕnangkabau Malays at the time of the migration, and only rudimentary knowledge concerning the custom as it now exists there.

I take it that acquired property was closely assimilated to ancestral: as in a Malayali *tarwād* a man's acquisitions became ancestral in his own tribe at death.

I quote from Wilken: "Accordingly we see that in marriage the following possessions have to be distinguished: *harato pambaowan*, property of the husband, brought by him at marriage, and including the share assigned to him in the *harta pusaka* of his own family as well as his own *harta pĕncharian*; *harato dapatan*, the property belonging to the wife, which includes both *harta pusaka* from her own family and her own *harta pĕncharian*; and *harato suarang*, or property acquired jointly by husband and wife during the continuance of the marriage, that is the joint *harato pĕncharian* of husband and wife. At death the rule is that the property of the wife reverts to her own family—her children, brothers, sisters, sister's children, and so on (*haratō dapatan tinggā*), since the married woman does not leave the home of the family; the property of the husband, brought by him at marriage, goes back to his family—to his brothers, sisters, sister's children, and so on (*harato pambaowan turun*); and what has been acquired by both together during the time of marriage, and is therefore their common property, is divided (*harato suarang di-agie*), one-half going to relatives of the deceased husband or wife, in the order just given, and the other half remaining with the surviving widower or widow.

"Accordingly, as we have already noted in passing, children

do not inherit from their father. They can receive only gifts from him. Such a gift is called *hibah*. In order to be valid, however, it has to be bestowed in accordance with the *adat*, that is to say in the presence of his brothers and sisters, the heads of the village and a number of other witnesses. It goes without saying that for the bestowing of a gift only the *harta pĕncharian* can be taken into account. But even of these possessions a man cannot dispose freely; he stands under the control of his future heirs, who even during his life may assert their claim to the prospective inheritance, and consequently are always on the watch to resist any alienation. Nevertheless it has gradually become the rule in many districts, that at any rate half of the *harta pĕncharian* of a man can be transferred by gift or *hibah* to his own children." [1]

It should be noted firstly that a man's freedom to dispose of acquired property was very limited, secondly that the main rule of succession was originally very simple: all *pĕmbawa* went to the *waris jantan* (maternal relatives of the man), all *dapatan* to the *waris betina* (maternal relatives of the woman), joint conjugal acquisitions being divided equally whether on divorce (*chĕrai hidop*) or death (*chĕrai mati*). In other words, *property invariably kept within its tribe.* On divorce the hitherto joint tribal property was apportioned between the two tribes and ever afterwards remained therein.

In the Mĕnangkabau country itself we are told of a fairly recent development: the leap of property from one tribe to another by gift from a father to his children.

This tendency should logically have been much greater in the Malay Peninsula owing to the new family unit of husband, wife and children welded together by the conditions of the migration and the opening up of new tracts of land.

To the mechanically-minded I may liken the phenomenon to the resultant of two forces acting on a body. The two forces are (i) the tendency for property to become permanently identified with a tribe, and (ii) the tendency for a father under the new conditions of life to cleave more to his children than to his *waris*. We have yet other forces to add to these:

[1] *Mal. Soc.*, p. 22.

(i) the principle that unless he is married (and his wife is alive) the support of a man devolves on his *waris*, (ii) the original impossibility of a man inheriting land, (iii) the rapid agricultural development which has taken place in the peninsula during the last quarter of a century, during which it became customary for Malays to open up plantations, sell them to Chinese and then open up more land; whereby plantations became an article of commerce. Last and by no means least is the influence of Mohammedan law (*hukum shara'*). It is with the resultant of all these forces, pulling at different times and places with different strengths, that we have to deal.

Jelĕbu is in this respect an interesting study. Its isolation and the strong personality of the Undang have led to the preservation of a much purer custom than elsewhere. Nevertheless two of those new principles have been accepted in their entirety; rubber land is inheritable by males, and in every case the claim of children overrides that of the *waris*.

There can be little doubt that originally divorce (*chĕrai hidop*) and death (*chĕrai mati*) were treated in as identical a manner as the different circumstances permitted. It is however clear that divergent forces have been at work. The two extreme views are "*chari bagi*"—implying division into equal parts in the case of divorce and "*mati laki tinggal ka bini, mati bini tinggal ka laki*"[1]; the surviving partner inheriting the whole of the joint acquisitions. I owe the probable explanation of this divergence to a Rembau Malay: that whereas on the death of anyone there is a general feeling of friendliness, an atmosphere of give and take, at divorce both sides have all their pricks out and do their utmost to extract the last ounce for themselves. There is the further explanation, which I shall develop later, that the saying "*mati laki tinggal ka bini*" refers not to material property but to the duty (right, onus, call it what you will) on the part of the widow of *distributing* the property on the death of her husband.

The general conclusion which I shall develop in the chapter on *chĕrai hidop* is that in the process of relaxation of the

[1] It is a striking fact that this saying is not even known in the State of Sungei Ujong.

custom *a clear principle has crystallized out*: that every woman on divorce, whether she has children or not, *is guaranteed a "tĕmpat tinggal"*, a house, *kampong* and *sawah*. The distribution of the property only proceeds after it has been ascertained that she has ancestral property of this nature or after acquired property of this nature has been set aside for her. I shall argue that this is a provision of such immense sociological value that to cherish the *adat perpateh* is infinitely worth while if for this reason only.

§ 2. PĔMBAWA

Acquisitions made before or between marriages have little interest for us as such. If the man dies during the bachelor period within which they were acquired they can obviously be inherited by none but his *waris*.

It is subsequent marriage which converts them into *pĕmbawa* (bringings) which give them their main interest to us.

Men, as they say, bring property to marriage. "If the woman is rich the man who marries her should bring property. If the man had no property the woman would be reluctant, and the women on the man's side would be ashamed. What the man brings, however, is not the land but money, trinkets, anything that has a price, such as buffaloes and goats" (Suboh: Appendix XXVIII). Inche Suboh's statement was in answer to a question by me as to whether it was customary for men to be given a share of the ancestral *kampong* on marrying a rich woman. His answer was "No". His family give (or rather lend him for the period of the marriage) other forms of wealth, and it is to these that Inche Suboh refers. He did not touch on the question of the man's own bachelor acquisitions. The Datoh Jelĕbu supports him as regards ancestral land. "It is not according to the custom for a woman to lend ancestral property of hers to a son."

Property brought to marriage consists thus of two main classes:

(i) Gifts from his parents, and

(ii) Property acquired by himself either while unmarried or in conjunction with a wife. The first class is divisible further

into two sub-classes: (*a*) certain obligatory gifts ceremoniously given by his parents at the time of marriage, and (*b*) gifts of acquired land, such as a rubber estate, for instance, which may be given at any time. These three categories form his *pĕmbawa*.

Parr and Mackray give a different classification with which I do not altogether agree.

According to Parr and Mackray:

"The property brought by a man to his wife on marriage is of two kinds:

"(i) A share of the ancestral property taken away with the consent of his mother's family (*hĕrta tĕrbawa*). (We have seen that this term is not a technical term of the *adat* and is not used in this sense.)

"(ii) Property forming his share of the earnings of a former marriage, or acquired by him as a bachelor (*hĕrta pĕmbawa*)" (P. and M., p. 86).

They go on to say: "All such property must be declared before, or at the time of marriage, in the presence of witnesses. From this declaration guns, cannon, buffaloes, or gold-sheathed weapons are exempt, as their possession would be matter of notoriety" (P. and M., pp. 86–7).

Further investigation is required as to the exact forms of property which need to be declared (or even, as will appear later, whether they need be declared at all). There may be local variations. The Datoh Jĕmpol makes a materially different statement:

"*Duit bĕrbilang, padi yang bĕrsukat hĕndak di-sàksi-kàn dĕngan tĕmpat sĕmĕnda*".[1]

(Money counted, padi which is measured out shall be checked over with the bride's relations.)

"Money and padi must be declared to become *pĕmbawa, buffaloes and land need not be declared* as they are their own witness" (Appendix XL).

In view of this statement I have slight doubts whether Parr and Mackray were quite certain of their ground. Some

[1] *Sĕmĕnda* is essentially a matriarchal marriage, entailing living with the bride's relations. *Tĕmpat sĕmĕnda* is thus the bride's home, and, by extension, her relations.

pages further on they talk of "effects brought by him to his wife's home" as though excluding less permanent forms of property. "The claim of the husband, or should he be dead, of his family, to effects brought by him to his wife's home, is sustainable on divorce only if such property was duly declared by him at the time of marriage. His family seldom find it an easy matter to recover their property in cash which the husband was permitted to remove. The wife naturally alleges that it was spent long ago in bringing up the children. But if the man's family can point to the wife's investment in mortgaged lands or buffaloes, their claim to recover by sale is valid" (P. and M., p. 92).

There are almost certainly local variations. According to Inche Omar no part of the *pĕmbawa* is recited at marriage in Sungei Ujong—though he admits that he has no experience of marriages in which the groom brings property in his own right, and that it is possible that on such occasions this property is recited. His description of the proceedings is of some interest. "Three days after marriage the bride and bridegroom go and present themselves to the bride's mother-in-law. When they have reached her house the mother-in-law gives them a complete set of cooking utensils, bowls and plates, trays, jugs, money and a suit of woman's apparel. That is what is given to ordinary people. If the woman, however, is rich and a *waris nĕgri* (in the line of election to the rulership of the state) it is obligatory on her mother-in-law to give in addition to pots and pans and a suit of clothing a bed and either one or more buffaloes or cows. This is the *pĕmbawa*. Land is not given (at this time). Moreover this property is not read out. Going to her mother-in-law's house the woman carries cakes, coming back she brings the 'bringings' (*pĕmbawa*)."

Till further investigation decides as to the extent of the local variations I am inclined to side with the Datoh Jĕmpol, and to hold with regard to the general custom that though it is probably the custom to recite all the property brought to a marriage the failure to do this only invalidates a subsequent claim if the property is of a type which requires counting or measurement for its identification or assessment.

Buffaloes, land, cannons, gold-sheathed weapons and so on brought by a man should be sufficiently well known not to need declaration. Parr and Mackray's statement that "all such property must be declared" is therefore more notable by the number of exceptions than as a rule.

To resume where we originally broke off:

"The debts of a bridegroom must be similarly declared, or the wife may repudiate her liability therein. The necessity for the declaration arises from the fact that the wife obtains no permanent interest in *property thus settled upon her.* She has the use only during married life.

On divorce or death property brought by him on marriage reverts to the husband, or his family."

The italics are mine. I may be wrong, but I have come across no evidence of property being settled by a husband on his wife. Everything that I have heard has led me to believe that both parties throw their property into the common fund and enjoy it *jointly*. It is only on dissolution of marriage that it is separated again into its various constituents.

The general rule is that on dissolution of marriage *pĕmbawa kĕmbali*. It returns from its subservience (with the man) to another tribe, to his own tribe, his *pĕrut* and his close family circle. The borrowed gold, trinkets, buffaloes and goats the scion of a rich family brings back from his rich wife may be taken back by his mother and sisters. He retains, however, his own bachelor acquisitions, and according to Che Omar (S. Ujong) acquired land given him by his parents, subject to some sort of a lien on the part of his *waris*, and, in modern times, of his children.

Now for the exception.

Imagine the case of a man who, out of his bachelor earnings and before marriage, has acquired a piece of waste land, felled and cleared it, and planted rubber. After three years of marriage it comes into bearing. His wife dies or he divorces her a few years later when the rubber is at its best. The increase in value during marriage has been tremendous. Shall the rubber plantation rank entirely as *pĕmbawa*?

Let us turn to the evidence, which is summarized on p. 147

in the chronological order in which it was collected. It is fairly clear that, discounting Inche Bakar's statement (Appendix XIX) as having been taken before I had met this problem of increase in value, a general custom emerges of the original value only being considered to be the man's *pĕmbawa*, the increase in value ranking among his joint conjugal acquisitions. This is eminently logical—though it is not realized as such by the poor muddle-headed peasants. For instance, Dĕmang Asah: "*Charian bujang* becomes *pĕmbawa* and the *waris* inherit it. If it is rubber land gone up much in value, say worth $100 at the time of marriage and $1,000 at the man's death, the *waris* would get say $300 and the children say $700. I have been concerned in a great many cases about *charian bujang*, and the custom is here that the children get a share even if the land has not increased in value at all—*Anak banyak kuat* (the claim of children is very strong)." It will be realized that if the principle which I have stated above were consciously being followed the *waris* would get $100 and the children $900. The disparity in shares would even be further increased if the principle were applied which Dĕmang Asah himself mentions as applying to the case of no increase in value, *anak banyak kuat*, the children are strong. There is some principle of reasonableness, of compromise, working obscurely at the back of their minds. It might be explained by a guess as to the historical development of the custom: that originally the *pĕmbawa* went solely to the *waris*, and that the ranking of increases of value as *charian laki bini* went hand in hand with, and was a consequence of the progressive acknowledgment of *the claims of children*. So that in the case of no increase in value the claims of the children were still operative and they got a share. In the case of a large increase in value, however, the *waris* saw no reason why they should forgo all the increase in value to which they were originally entitled. According to this hypothesis the principle that increases of value of *charian bujang* during marriage became *charian laki bini* [1] would have been a later development,

[1] Ma'anor bin Punggo (Gĕmencheh) states: "*Charian bujang* goes to the *waris*. But if the property goes up in value after marriage the increase in value becomes *charian laki bini*" (Appendix XXXIII).

due, in the language of modern psychology, to *a process of rationalization.* If this hypothesis is correct it is likely that the effective claim of women on divorce should be found to lag behind that of the wife and children on the death of the man.

Further research would be desirable.

A variant of the above rationalization appears in the statement of the Datoh Gĕmencheh (a small tributary to Johol) to the effect that the rewards of equal labour should be equal; quite a modern concept! "The *adat* is that on marriage *charian bujang jantan* becomes *pĕmbawa* and on divorce goes back to the *waris.* But if a marked increase in value has taken place during marriage there should be a division and the children should get a share, *the division of sweat of the brow* [1] *should be equal*'" (Appendix XXII).

The principle of equal reward of equal labour superposed on a matriarchal basis and coupled with an appreciation of the necessity of division of labour between men and women would result in the "bachelor value" of property ranking as *pĕmbawa,* and the value accruing during marriage being shared equally between man and wife.

While considering the distribution of *pĕmbawa* at the time of rupture of marriage we have drifted on to a consideration of the later stage [2] of inheritance on the subsequent death of the man. We have found that in the special case of increases in the value of *charian bujang* the children acquire a strong claim which may to a very great extent counteract the effect of the ancient principle *pĕmbawa kĕmbali.* This new principle of the claim of the children can be so strong that, as in Sungei Ujong, "acquired land given to a man by his parents is inherited by his children" (Appendix XLII).

When marriage has been terminated by divorce, however, matters are more complicated. The essential principle under these conditions is that the manner of inheritance of *charian*

[1] I have thus translated *jorih,* a word which is not to be found in the dictionaries. If it did exist the normal Malay form would be *jĕris.* Literally it means really hard work.

[2] It is, of course, simultaneous in the case of the rupture of marriage by the death of the man.

bujang (bachelor acquisitions) on the death of the man depends on the settlement made at the time of the rupture of marriage. In default of a clear settlement at that time the old *adat*, *pĕmbawa kĕmbali*, devoid of exceptions, carries the day. In the summary of one of my own cases, Rembau Land Case 77/1920, I have written: " It was held that the land was in fact the *charian bujang* of Sitan between his divorce from his first wife Riah and his marriage with Sintan, that she was however estopped from claiming at this stage on account of any increase in value as such a division, consequent on such a claim, should have been made at the time of divorce" (Appendix XX).

If marriage is terminated by the death of the wife the division of *pĕmbawa* should be made on the 100th day at the ceremony of *jĕput*.

Further research is required on the question of how far the eventual inheritance of *pĕmbawa* follows the same lines if marriage is terminated by death or divorce. I am inclined to think that in such a difference would a reconciliation be found of the most contradictory statements which are met, specially in respect of the Rembau *adat*. For instance, in the notes of evidence of the case I have mentioned above, Rembau Land Case 77 of 1920 [Appendix XX], occur the following statements:

" Datoh Sri Maharaja Amat : ' On death it goes to the *waris* even if the man has only married once and the widow survives him. *Charian bujang jantan* cannot go to the children. The children can only inherit the share in the increase in value that goes to the mother.' "

" Datoh Mandalika Pajar : ' His *charian bujang* goes to his children : if he has no children to the widow. *The custom about hĕrta pĕmbawa only applies in the case of divorce.*' "

"Datohs Pĕrba and Sĕri Maharaja agree to the proposition I put up :

" Both Datohs agree that *charian bujang* cannot be inherited by the children in the case of *chĕrai hidop* (divorce), though in the case of *chĕrai mati* (death) the rule applies as in the case

of *charian laki bini* about *jĕput* and *tĕntu-kan* a part to the children." That is, on the occasion of the ceremony on the hundredth day after the woman's death, when the man is invited back by his maternal relations, he has the right to settle a part of his *charian bujang* on his children, a right which he does not possess when marriage is terminated by divorce.

This difference in the shares of property according to the manner of termination of marriage have undoubtedly arisen, as I have said elsewhere, owing to the very different atmosphere at death and divorce. At the death of one party both families are sympathetic; on divorce both families are inimical to each other. This divergence of the custom on the two occasions almost certainly has a secondary, and beneficial though unintended effect, namely discouraging divorce to a certain extent. If a man has a considerable amount of bachelor acquisitions and children to whom he would like to leave them, he must certainly think twice before he divorces his wife.

The question exactly what happens with regard to land which has increased in value during marriage presents certain difficulties. Datoh Jelĕbu's description probably applies generally in the case of a considerable increase of value. "If the land has gone up in value much during marriage the *waris* only get the value of the land at the time of marriage and *the land itself goes to the wife or children* according to the circumstances as *charian laki bini.*"

In the case of a small increase in value it is probable that the land itself goes to the man's maternal relations.

Local variations of the custom :

I have already drawn attention to the statement of Dĕmang Asah, of Naning, in which he argues very strongly in favour of the claim of the children, and have said that this requires further investigation.

The statement of the Pĕnghulu of Ayer Kuning (Johol) also requires further investigation: "*Charian bujang* goes to his *waris* on his death unless he has children. If there are children the whole goes to the children on his death *if they pay the*

funeral expenses. The same thing happens if he divorces and marries again. The second wife bears the funeral expenses and the property is divided up among the children."

Extract of evidence concerning:

CHARIAN BUJANG.

Rembau (xxii). It goes *to the waris.* If he sells or charges it the *waris* must get the price.

It goes to the children only if given with the consent of the *waris* during his lifetime. (xxiv). (Also Tiano *v.* Sialus, Rembau Appeal Case, 1927.) If increase in value something goes to the children.

Johol (xxxiv). If increase in value during marriage the *jorih* should be equal: i.e. the children get a share, possibly the whole land.

Johol (xxxv). The increase in value becomes "*charian laki bini*".

Jelĕbu (xxxviii). In the case of a marked increase in value during marriage the children get the land, the *waris* the value of the land at the time of marriage.

Naning (xxx). *Exception requires further proof:* the children always get a share whether there has been an increase in value or not—on the grounds that children have the strongest claim on property. But I have not ascertained who gets the land.

Johol (Ayer Kuning) (xxxvi). The whole goes to the children on the man's death if they pay the funeral expenses. This view requires further proof before it can be taken as an exception.

Jĕmpol (xl). The increase in value goes to the children. I have not ascertained who gets the land.

Naning (xxxii). The excess in value is counted as *charian laki bini.*

Rembau (xxvii). The value at the time of marriage is the man's *pĕmbawa*, and at his death goes to the *waris*, the remainder is dealt with as *charian laki bini*. The wife and children have no claim on the *pĕmbawa.*

§ 3. DAPATAN (GAININGS)

The inherited property[1] of a woman, her *charian bujang* (acquisitions while unmarried) and her share of *charian laki bini* in a former marriage form her *dapatan* (Appendix XVII). "Inherited property" should be understood in a wide sense to include her share on partition of joint family property (including both ancestral and acquired property).

All this property is definitely hers. Her ascendant and

[1] More properly her share of her parents' property (which may be given her before their death).

collateral *waris* can only have a claim on it in the event of her death, and only then if she dies without daughters. "The woman's *dapatan* goes to her own children on death—only if she has no children does it go to her *waris*" (Dĕmang Haji Abdul Latib, Appendix XXXI).

The ancestral property at least is recited (*di-bacha*) on the fourth day after the wedding. Inche Omar (S. Ujong) describes the proceedings thus: "The day after the bride and bridegroom have presented themselves before his parents (*mĕnyalang*) the bride's sisters, in the bride's house, give the bridegroom the honorific name by which he will in future be known by them. For instance, if he is learned they will dub him 'Karimalin'. If he is clever at wrestling they will call him 'Nekarmalin'. The saying goes:

Kĕchil bĕrnama
Gĕdang bergĕlar

(when small he has a name, when grown up a title)."

"When this title has been decided upon they say 'these are the gainings[1] of Nekarmalin' and they recite the *dapatan*. They usually read out the ancestral property, orchard, rice field and house (*kampong yang sĕsudut, sawah yang sĕlĕpa', dan rumah yang tĕrdiri di-atas kampong itu*)."

"Things in the way of buffaloes, goats, and rubber plantations: if the parents want to give them, they give them later. These later gifts rank as *dapatan* also. The fact that these things have not been recited at the time of marriage does not usually lead to trouble.

"The *waris* of the bridegroom are present at this ceremony. They attend by invitation" (Appendix XLII).

As regards the effect of an increase in the value of *dapatan* during marriage, there is some conflict of evidence. It would seem, in general, that the tendency for it to rank as joint conjugal earnings is less in this case than in that of the man's "bringings" to marriage. According to Inche Omar (S.

[1] Note that this expression describes the property from the point of view of the husband, though it is enjoyed jointly during marriage. In somewhat the same way what the man brings to marriage is described as *brought back* by the woman from her mother-in-law's house.

Ujong) increases in the size of flocks and herds are definitely excluded from the operation of this principle. Moreover the principle does not operate at divorce.

Parr and Mackray take the extreme view that the principle never applies. " At no time does the husband acquire any rights over the separate estate of the wife. Hence even if the value of that property be enhanced by improvements he has made, by additions to the house, or by trees planted in the *kampong* the wife resumes sole interest therein on divorce" (P. and M., p. 92). I am inclined to think that Parr and Mackray have erred in considering ancestral property and in overlooking acquired *pĕndapatan*. As will be seen in the chapter on divorce I maintain that changes in the value of the wife's *ancestral* property or of her house, even if it stand on acquired land, may not be taken into consideration.

The Datoh Jelĕbu says: " A piece of cleared land given her by her mother is planted up by both of them (husband and wife). It is her *dapatan*. Her *waris* have a right to the value of the land when given her by her mother " (presumably if she dies without children) [Appendix XXXVIII]. This shows the working of the principle between a widower and his wife's *waris* in the case of a childless marriage.

According to Che Omar (S. Ujong) : " Of *dapatan* which has increased in value, such as a rubber plantation which had just been planted up at the time of marriage, the husband gets a share if marriage is terminated by the death of the wife,[1] but not so if by divorce."

§ 4. DIVISION OF PROPERTY AT DEATH

1. *Death of the husband first.*

The widow pays the funeral expenses. These include the expenses of the various ceremonies and feastings subsequent to the burial itself on the 3rd, 7th, 14th, 40th, and 100th days.

On the 100th day is the important ceremony of *batang tuboh* (giving back the relics of the husband's body : *batang*, a stick or rod, *tuboh* = body). " The husband's *sa-kadim* (close

[1] He is not quite sure of this.

relations on the maternal side) come to the house on the 100th day. The wife gives them a pair of trousers, a coat, a hat, a knife, a mat and a pillow."[1]

All the property is recited so that there should be no trouble later about debts. The *pĕmbawa* and the *dapatan* are checked, allocated according to the *adat* already described, and losses made good. The widow has the disposal (*timbangan*) of the jointly acquired property (*charian laki bini*). This is apparently the force of the saying "*mati laki tinggal ka bini, mati bini tinggal ka laki*" (on the death of the husband it remains to the wife, on the death of the wife it remains to the husband). The widow reads out at the ceremony the way she proposes to dispose of the property. It is usual to give a little to the male *waris*, but only by way of *pakat* (agreement) (Appendix XXV). The implication is that this is not only not required by the *adat*, but actually constitutes an infringement of the *adat* which may lead to trouble: I take it that this is what Datoh Sate means by the saying, "*Alah adat tĕgah de mom-pakat*", which translated into high Malay would read, "*Alah adat tĕgah dĕri muafakat*", and by his gloss, "*Adat trang pakat glap*" (the custom is clear, collateral agreements obscure).

The above interpretation of the saying *mati laki tinggal ka bini* as conferring not the *property* but the *right of partitioning the property* receives strong support from Inche Suboh, who was present when the above statement was taken, by Dĕmang Haji Abdul Latib: "At the ceremony of giving back the *batang tuboh* to the *waris* or later she could give shares to her children"; and by Inche Mohamed Pilus: "The *waris* together with the widow used to apportion the property between herself and the children." Furthermore this interpretation is

[1] This giving back of the most intimate relics of his body is most peculiar. *Kain Sarong* is not included, only the *seluar* (trousers) which are really drawers, but like early Victorian ladies' drawers, peep out from underneath the skirt. The giving back of the mat and the pillow on which he has slept with his wife seem to emphasise the fact that the ceremony is typical of the end of sexual life with the man. His widow not only discards these emblems of her intimate relations with him as a sign that they have ceased, but hands them over to the woman who brought him into the world, or failing her to his sisters, the symbol, it seems to me, of utter and complete breach and renunciation: the man goes back to whence he came.

the only one which allows for a compromise between otherwise irreconcilable contradictions.

The manner in which the property was distributed by the widow, no doubt with the help of endless consultation with her husband's *waris*, was not entirely arbitrary but must always have depended on a fairly fluid *adat* which we had best describe as "convention". Inche Mohamed Pilus describes the pure Rembau *adat* at the time when he was a young man. I think he can be taken as an absolutely reliable witness as to that old custom. "If there were no children by marriage the woman gave an account to her husband's relations on the 100th day of the expenses and what was left over. The *waris* usually handed the whole of this over to her: at the most they took a quarter, third or half share for themselves.

"If there were children she also had to inform them of the position. The *waris* never used to claim anything if there were children. The *waris* together with the widow used to apportion the property between the widow and the children. The sons usually got money, the daughters land and buffaloes. This is the usual origin of *pĕmbawa* and *dapatan*" [i.e. the share of father's *charian laki bini*—G. de M.].[1]

This statement develops the very important *distinction between childless marriages and marriages with children.* The line of argument is logical and fair. If there are children it is to the general advantage that their mother should have all possible material means for bringing them up. But if, on the other hand, there are no children and the wife already has sufficient property for her support, there is no reason why the husband's *waris* should not obtain anything up to a half of the joint conjugal acquisitions, that which they must have been entitled to in a more primitive stage of the *adat* when the husband was considerably more strongly attached to his own *waris* in contradistinction to his wife than can have been the case in the last century.

A limitation of the power to dispose of the property unhampered by her husband's *waris* is described by the Datoh

[1] Appendix XXVII.

Johol with the concurrence of the Datoh Ulu Muar and Inche Mohamed Pilus : " On the death of the husband the property should not go to the widow only—in case of trouble when she marries again—but should be divided between her and her children. This would be read out at the *batang tuboh* ceremony. The division is equal as between sons and daughters. But this division should be made after separating women's clothes and jewels, houses, weapons, etc. The remainder is valued and divided equally " [i.e. the part which goes to the children is divided equally between them—G. de M.].[1] The principle here is quite clear. The husband's *waris* are prepared to give up the half-share to which they were entitled under the original *adat* for the sake of the children, but in doing so they want some guarantee that the property which they renounce shall not be frittered away by a subsequent husband. Presumably this distribution is made only if the children are of a certain age.

Over the greater part of the area under consideration the custom wavers somewhere between this distribution subject to the watchful eye of the husband's *waris* and the straight-out inheritance by the widow with her full control over it. The evidence which I have recorded does not make it clear whether she should obtain straight-out inheritance of the whole *charian laki bini* in the event of there being children of the marriage, I think she should not.

Even where the widow has a right to straight-out inheritance " the husband can by a private arrangement with his wife settle a small portion of the *charian laki bini* on his mother ".[2]

It can, I think, safely be taken as a general rule that the wife (and children) only have an exclusive claim as against the husband's *waris* when there *are* children. But it is not clear from my evidence, and requires checking, how far the claim of the *waris jantan* in childless marriages depends on the total amount of property. (The Penghulu makes a statement in Appendix XXXVI which might be interpreted in this sense, but I think he refers to the converse case of the claim of the

[1] Appendix XXXVII. [2] Appendix VII.

waris jantan on the husband's share of the inheritance of a pre-deceased wife.)

We have seen that the combined Johol, Ulu Muar and Rembau statement emphasizes the claim of the children. This claim is pushed to its uttermost limit in the case of Jĕmpol. But it should be noted that it only applies when the children are no longer quite young, and is in keeping with the Jĕmpol tendency to early partition of joint family property: "While the parents are still alive the custom demands that whenever a daughter marries they should give her a piece of land. They don't wait till their death to give it.

"On the death of the husband the property does not go to the wife but to the children—the wife *mĕnumpang* with her daughters (lives on them). If the children are still quite small the mother gets the property." [1]

I have left till the end a particular aspect of the old Rembau *adat*, which shows the *adat* in a most interesting transitional phase. "In the old days, if the man died in his *waris's* house the *waris* took the whole of his share of the *charian laki bini* If he died in his wife's house the *waris* did not claim." [2] The inheritance by the *waris* was clearly the original custom—and in Mĕnangkabau—men must almost invariably have been nursed in their last illness and died in their mother's house. The mother and her *suku* had the onus of support, and the property devolved upon them. In the peninsula the parental home evolved as we have seen. The wife took over the obligations of the *waris* and with them the right to inheritance.

This discloses the general principle which we should be wise to keep in view henceforth, that the duty to support carries with it an interest in the property: in all administration the land goes to the tribe on whom rests the onus of support. (Note: this generalization was actually formulated by Mr. E. N. Taylor, M.C.S., when we were going through my notes together.)

There appears to be a sharp contrast between the general custom described above, depending on a growing claim on the part of the children and the particular *adat* of Sungei Ujong.

[1] Appendix XL. [2] Appendix XXVII.

Che Omar states: "The rule is division into two: half to the man's *waris*, half to the woman. That is how it is if there are no children. If there are children it depends upon the man's *waris*: they can still take half if they please. Actually in my experience they still take half or even more than half. That is how matters have always been. It is not right that it should be so, and there is a tendency to break away from the custom now in this particular, the children fighting for their own hand. It would seem that the customs were identical in Sungei Ujong in the cases of termination of marriage by death and divorce." [1]

2. *Death of the wife first*

It is quite clear that in this case there are elements of complication which are not present when the husband dies first. The wife is the natural protector of the children and on her devolves the nursing of the husband in illness and his burial after death. If the children are not old enough to fend for themselves some one must now take responsibility for them and be guardian of their property, and some one must assume some measure of responsibility for the widower.

The tie between the father and the children used undoubtedly to be completely severed at this juncture. By the ceremony of *jĕput* which forms part of the 100th day ceremony after the death of the woman, the widower, who has hitherto been seconded to his wife's tribe, is formally invited back to his own tribe by his *waris*.

From the moment that he accepts the invitation at *jĕput* he and his children are definitely members of different tribes, and the responsibility for him in sickness and at death tends very strongly to devolve not on his children but upon his female blood relations. They must therefore obtain at least a lien on sufficient property to defray all the expenses which can reasonably be expected in connection with him. The first glimpse of light on this difficult point was shed for me by the Penghulu of Ayer Kuning (*vide* Appendix XXXIX). A part of the *charian laki bini* called his *kĕpan* (shroud) is set apart for inheritance by his *waris* for payment of the expenses

[1] Appendix XLII.

of his maintenance, sickness and funeral (*vide* Appendix XIII); neither the wife's *waris* (if there were no children to the marriage) nor his children can have any claim unless the amount of property at the death of the wife exceeds that necessary to pay for the wife's funeral expenses, which is the first claim on the property, and the *kĕpan*, which is the second. The *waris jantan* lose their claim, however, on the *kĕpan* if they do not in fact maintain the widower and defray the expenses incident on his illness and death. In the case of there being no children the amount of jointly acquired property must in fact be large for the deceased woman's relations, the *waris bĕtina*, to obtain a share.

We can see clearly in the précis of evidence the various tendencies at work: the tendency to a division in equal shares between representatives of the two tribes after the survivor has paid the funeral expenses of the deceased: the provision of property wherewith to compensate the party which bears the expenses connected with the survivor's death when he himself dies, and the growing tendency which we have mentioned before of the children being favoured in preference to the *waris jantan*. This latter tendency shows itself in a phenomenon which does not appear to have been noticed before, that of *tĕntukan*, settling property on (or bequeathing it to) children. This settlement would appear to have to be done at the all-important ceremony of *jĕput*. Both *tĕntukan* and *jĕput* deserves more detailed consideration.

Tentukan: It has been held by Mr Justice Acton that a Rembau Malay cannot make a will.[1] In one sense he is wrong and in another right. Unlimited testamentary powers are entirely foreign to the *adat*. Settlement of property by agreement of all parties in defiance of rules of inheritance sanctioned by the *adat* is distinctly frowned on. That is the sense of the rather cryptic saying of Datoh Sate (Appendix XXV), "*Alah adat tĕgah de mompakat*"[2] which he explains by "*adat trang, pakat glap*". In Rembau Land Case 10/1913 (Appendix I)

[1] In re Datoh Niang Kulop Kidal deceased. Seremban Appeal 106/26, Rembau L.C. 18/27.

[2] Compare Datoh Jelĕbu, "*Alah adat, tĕgah pakat*", Appendix XXIII.

the Resident on appeal held that a man had no power to agree that a rule of the custom should not apply.

On the other hand there is abundant evidence that in certain well-defined cases a man is allowed to settle on his children property which under the original *adat* undoubtedly went to his *waris*. The operation of this power of bequeathal is not limited to the occasion of a wife predeceasing her husband. In a 1920 statement by Ma'abot (Appendix V), confirmed by the Datohs Sri Maharaja and Gĕmpa Maharaja, he said that on divorce *charian* [*laki bini*] was divided equally between the two parties; that on the death of the man the property, if not *tĕntukan*, descended to his *waris*, but if *tĕntukan* to his children. A little later discussing the Resident's decision in Rembau Land Case 39 of 1913 with a woman named Lima, she told me that a man could *tĕntukan* his share (of *charian laki bini*) on divorce to his children and that this was ordinarily done. In Rembau Land Case 77/1920 (Appendix XX) Datoh Pĕrba and Datoh Sĕri Maharaja "agree that *charian bujang* cannot be inherited by the children in the case of *chĕrai hidop* (divorce), though in the case of *chĕrai mati* (death) the rule applies as in the case of *charian laki bini* about *jĕput* and *tĕntukan* a part to the children". In a 1920 statement (Appendix VII) it is stated that in the case of the death of the husband before that of the wife a small portion of *charian laki bini* can be inherited by the man's mother provided he had previously settled it upon her.

If this *tĕntukan* had not taken place the whole of the conjugal acquisitions would have descended to the wife.

In Rĕmbau Land Case 69/20 before me the Datoh Gempa Maharaja deposed to the effect that a woman may according to the custom leave land *to an adopted daughter* as against a true daughter by a will either embodied in a formal document or made orally before the tribal chiefs at a feast given for the occasion. According to him acquired land could be given in this way, not ancestral land (Appendix XX).

There are parallels in Sumatra. In the Padang Highlands "in many districts at any rate half a man's *harta pĕncharian* can by gift accrue to his own children—it also happens that

a man disposes of his *pěncharian* effects by will" (*Mal. Soc.*, pp. 92–3 and note).

As to whether the act of *těntukan* is limited to special occasions the evidence is not altogether clear. It would appear in general, that it was limited to the time of divorce and the 100th day ceremony. The Pěnghulu of Ayer Kuning however (Appendix XXXVI) says it can be done at re-marriage. Lima, in Appendix V, rather seems to indicate that it can be done at any time.

Jěput.

On the occasion of the feast which takes place on the 100th day after the death of anyone, in this case of a man's wife his *waris* go in procession to his wife's house, in which he should still be living, carrying trays of chewing material, betel leaf, areca nut, lime and gambier, which they offer to him and to the dead woman's *waris*. Accounts are taken of all the property brought to the marriage. Theoretically, according to the old *adat*, it all goes back whence it came, and losses are made good out of joint acquisitions ; in practice, according to the modern custom, settlement on the children is allowed of part or the whole of the man's share. Conjugal acquisitions are similarly reckoned up and settlements made. After all this is over his *waris* ask the man to return to them. The present Datoh Rembau has told me that as far as he has been able to ascertain it is the invariable practice for the *war is* to *jěput*, and for the invitation to be accepted. Malay Assistant Bakar says that "*jěput* is obligatory and is always done" (Appendix XIX), Inche Mohamed Pilus confirming this. The Datoh Johol says much the same.[1] But, as we shall see, there are reasons for believing that the invitation is not always made.

The questions confronting us are : (i) Is the invitation always made ? (ii) Is it possible to refuse it ? (iii) What results have (*a*) the failure to make the invitation, (*b*) its refusal, on the distribution of the property ?

(i) *Is the invitation always made ?* In 1920, in the course of a statement the record of which I have lost, I remember

[1] I have recorded in Appendix XXXIII " *Jěput* is essential. On the latter point he seemed to say that *jěput* is a part of the custom which is never left out and is from that point of view essential."

Ma'abot telling me that the fact of *jĕput* having taken place should not be taken for granted; if denied, the evidence of individuals present at the 100th day feast should be taken as to whether the incident of the ceremony, such as the formal presentation of chewing materials, actually did take place. I find that at about the same date (Appendix VI) I recorded a statement from Datoh Sĕri Maharaja and Datoh Gempa Maharaja describing the distribution of property in the case of the invitation not being made. Parr and Mackray also make a significant statement "if an indisputable offer of a home has been made to him by his mother's family".[1]

(ii) *Is it permissible to refuse the invitation?* Parr and Mackray make the statement: "After the divorce or death of his wife . . . if he elect to live as a widower with his children in their mother's house . . . if an indisputable offer of a home has been made . . . *his refusal of that offer* . . ." The inference is that refusal is permissible—but compare the statement in the note.[2]

(iii) *What results has the failure to make the invitation on the subsequent inheritance of the property?* The only evidence I have on this is the joint statement of the Datohs Sĕri Maharaja Amat and Gempa Maharaja Zakaria in 1920: "The man retains the whole of his *herta charian*, which goes to his children on his death" (Appendix VI).

(iv) *What results has the refusal of the invitation on the subsequent inheritance of the property?* Parr and Mackray say: "His refusal of that offer does not extinguish the right of the sisters to inherit his estate, but they are liable on succession to pay or refund the cost of their brother's funeral" (P. and M., p. 92).

According to Che Omar only the *pĕmbawa* is affected: "If a man does not return to his *waris's* house he must send back at once the presents he has received from them" (Appendix XLI).

[1] Che Omar (Sungei Ujong) agrees, however, with the Datoh Rembau: "It is obligatory on the *waris* to invite and they always in fact do invite" (Appendix XLI).

[2] According to Che Omar it is not allowable to refuse the invitation, that is *de jure*. *De facto* a refusal can be indicated in the words of an acceptance. "My mother died. My father was *jĕmput* by his *waris*. He replied that he accepted the invitation, but he wanted to look after the children and proposed to live with them" (Appendix XLI).

It still remains for us to deal in some way with, to find some explanation of, or some reconciliation between, the two extreme views of the custom which we have already met, that on page 75 of Parr and Mackray: "Property acquired during the wedlock, the joint earnings of man and wife, descends on the death of the wife to the female issue" and that expressed by the saying "*Mati bini tinggal ka laki*" (on the death of the wife it remains with the husband)—and on the principle that it has then become identified with his tribe, that it descends from him to his *waris* and not to his children.

I have already mentioned that sayings are untrustworthy guides capable of being twisted in all sorts of ways, as often as not expressing the mere semblance, not the substance, of truth. Yet here is a statement, and where there is smoke there is usually a fire. We must show on our theory some reasonableness for the saying coming into being or else doubt is thrown on the theory itself. *Mati laki tinggal ka bini, mati bini tinggal ka laki.* As to the first half of this saying, the inheritance by the wife, the origin seems fairly clear. On the development of the tendency for the children to supplant the *waris jantan*, the property would normally go to the woman's tribe, to the wife in trust for her children. There would be a justifiable change from the saying "*chari bagi*" to a new saying "*mati laki tinggal ka bini*". There would also be a natural tendency for the converse of this saying to grow up in order to balance it if there were any shred of custom upon which to build it. I suggest that on our theory the saying would actually be true in what must before the rubber boom have been the average condition: moderately small joint acquisitions which would be entirely swallowed up in meeting the funeral expenses and in providing a "*kĕpan*".[1] The generalization would be true in such cases that on the death of the wife the whole of the balance of the *charian laki bini* after payment of the funeral expenses went to the husband.

There is even no need to fall back on Datoh Sate Salam's theory (in Appendix XXV) that the force of the saying "*mati*

[1] This settlement of a *kĕpan* on the *waris* appears to be unknown in Sungei Ujong.

bini tinggal ka laki, mati laki tinggal ka bini" resides in the custom that the widow has the disposal of the property at the ceremony of *batang tuboh*, and the widower the disposal at the ceremony of *jĕput*. This theory takes for granted that the widow and widower have invariably the disposal of the property. It seems likely that they have a right of disposal subject to opposition by the *waris* if, for instance, the *kĕpan* is not sufficiently large.[1] But it seems to me far more probable that the first theory should have been the immediate cause of the saying.

As for the opposing theory by Parr and Mackray, it seems clear that it is merely incomplete. They had obtained information about the *kĕpan* supplied out of ancestral property for the ancestress of the family, but had not discovered the similar phenomenon about the *kĕpan* supplied out of acquired property for a widower.

Parr and Mackray's theory as it stands, that on the death of a woman leaving a widower and children the whole of the property goes to the children, appears to be true only of a very distinctive local variation of the custom, that in the State of Jelĕbu.

We can therefore take it as proved that both extreme statements of the custom are wrong : both Parr and Mackray's statement and the saying "*Mati bini tinggal ka laki, mati laki tinggal ka bini*". One of the consequences is that in the celebrated case 86/19 (Appendix XVIII) out of which this monograph originated both my decision and that given by the Resident and Undang on appeal were wrong.

The general theory at which we have arrived can be stated as follows :

At *jĕput* after *pĕmbawa* and *dapatan* have been dealt with and funeral expenses paid out of the *charian laki bini* the

[1] Though the saying *mati bini tinggal ka laki* is unknown in Sungei Ujong this right of disposal of the property would appear to be possessed. It is desirable, however, that the general applicability of the following statement be checked. "When my mother died she and my father left a rubber plantation. My father gave it all to his daughters. He *tĕntukan* it to them. He went back (to the *waris*) with nothing (*dĕngan kain sĕhĕlai sĕpunggong*). His *waris* made no fuss about it. He did not actually return to the *waris*. His intention was to look after his children only (and live with them)."

remainder is apportioned and the reversion decided of that part which then remains in the widower's hands.

Further investigation is necessary to clear up the point whether husband or *waris jantan* play the larger role, whether the *waris bĕtina* play any appreciable role, and whether the custom on these points is universal. There are too many contradictions even in the statements of so valuable a deponent as Inche Mohamed Pilus for it to be possible for me to dogmatise. To say that a man has the power to "*tĕntu-kan*'' to his children is equivalent to saying that the apportionment of property rests with him. This power of *tĕntu-kan* is recognized in statements II and IV taken in 1920. Though it is denied by Inche Mohamed Pilus in Appendix XIX, he admits the right later in Appendix XXXI. I attach so much weight to the statement XXV by Datoh Sate Salam supported by the Malay Assistant Suboh (who should be used extensively in any further investigations which are made—a much more reliable man than any of the *lĕmbagas*) that on the strength of this statement I am personally prepared to accept it as the *adat* of both Rĕmbau and Naning (Suboh is a Naning man who has spent most of his life in Rembau) that the widower has the right of disposal of the property at *jĕput*. On the strength of our general principle I take it, however, that the *waris* can expostulate, and that the *lĕmbagas* are probably brought in to help decide, "*timbang*," if the widower is, in view of his circumstances, mean about the "*kĕpan*".

I suggest that this be taken as the *general* custom of the peninsula, and that full proof of any *local* variation be required before it is accepted.

Jelĕbu can almost certainly be taken as a sufficiently proved local variation. The personality of the Datoh Jelĕbu is such that what he says is the custom almost certainly becomes the custom if it was not so already (a great contrast to Rembau where the influence of the ruler, probably already weak on the accession of Haji Sulong, dwindled to nothing during his undangship).

The Datoh Jelĕbu says that if there are no children the property is divided into two, half goes to the *waris bĕtina*,

half to the husband; if there are children the whole of the property goes to them or to the husband in trust for them. This, as I have already said, corresponds with Parr and Mackray's statement and represents the extreme example of the modern tendency for the claims of children to oust those of the *waris jantan*. The inheritance of half the property by the *waris bĕtina* in a childless marriage implies incidentally a complete denial of the saying "*mati bini tinggal ka laki*". It is presumably an archaic survival.

The right to the guardianship of the children is another important aspect of the law of inheritance. The general principle of exogamic matriarchy is that the children belong to the wife's tribe and that the husband, being of another tribe, is no relation to them. We have seen that in Malabar and the Padang Highlands the *adat kamanakan* obtains to the extent that the children are the property of the *karnavan*, the head of the *tarwād* in the one case and of the *mamak* in the other.

In the Malay Peninsula the *adat kamanakan* no longer exists, and the concept of "ownership" of children has been weakened, with the result that guardianship only is at issue; and the natural guardians are firstly the mother herself, and if she dies, the mother's own mother and sisters.

A rival tendency has, however, begun to make itself felt with the increasingly close relationship between a father and his children and the increased bequeathal of acquired property by a man to his children. The children undoubtedly begin to go with the property. (The tendency always is, of course, for the children to go with the property. But in this case the *adat* as regards property evolved the faster, and the *adat* as regards the children lagged behind.)

This is a matter that requires considerable further investigation with regard to the individual States. Rembau appears not to have moved an inch in the direction I have indicated. The children *always* go to the *waris bĕtina* on the death of the wife. In Jelĕbu on the other hand the tie between children and their father, as I have already indicated, has become exceptionally strong, and, accordingly to the Datoh Jelĕbu, when the wife

dies the whole property goes to the husband, and *with it the children*. It is for him and not for the deceased wife's female relations to look after the children. They only look after the children if he (in his turn) dies" (Appendix XXXVIII).

Sungei Ujong shows the beginning of the drift over. "It is the woman's *waris* who take charge of the children. It is true that at the time of *jĕput* the father can say that he wants to live with the children and look after them. But his sisters-in-law come and live in the house also, and he merely helps them to look after the children. Then, if he marries again, he cannot remain in the house, but has to go and live in his new wife's house." It is clear that the *waris bĕtina* are still the guardians, though the father can in fact, though not in so many words, refuse the invitation of his own *waris* at *jĕput*, in order to go and look after his children (Appendix XLI).

§ 5. DIVISION OF PROPERTY AT DIVORCE

The meeting of the parties for the settlement of property is thus described by Che Omar (Appendix XLI) with respect to Sungei Ujong: "At the time of divorce all the property is recited at the house of the woman. The *tĕmpat sĕmĕnda* (the woman's relations) are summoned. Should she be rich and at the same time a *waris nĕgri* the *waris* of the man must also be present. People who are outside the circle from which the Datoh Klana (ruler of Sungei Ujong) can be elected are called *orang suku*. Should the woman be an *orang suku* the man goes to her house alone. If she should be a *waris nĕgri*, however, it is obligatory on the man to go to her house in the company of his *waris*. If they did not go he would be liable, on the woman's complaint, to be fined by the *Undang*. There is a saying '*pĕrgi bĕrsuloh, pulang bergĕlap*' (going lit by torches, returning in the dark). A woman in such a position will not put up with such a lack of respect."

Putting together the sentences on page 22 of *Malayan Sociology* I take it that the Mĕnangkabau saying is:

harato dapatan tinggâ
harato pembawaowan turun
harato suarang di-agiĕ

(gettings remain
bringings descend
conjugal acquisitions are divided).

It is of interest that the word *suarang* is the Mĕnangkabau equivalent of *charian laki bini*, for, though I have never heard the word used in conversation in the peninsula, it occurs in the peninsular variant of the saying, that line of the saying is in fact duplicated, occurring in both the Mĕnangkabau and purely peninsular forms (it will be noticed that my translation and interpretation differ from those in Appendix I to Parr and Mackray).

" *Suarang bĕrageh*
Sĕkutu bola (Malay bĕlah→N.S. *bola*)
Chari bagi
Pĕndapatan tinggā (Malay *tinggal*→N.S. *tinggā*)
Pĕmbawa kĕmbali "

(Joint property is apportioned [1]
what was joined is split in twain
(joint) acquisitions are divided
gettings remain (with the wife)
bringings return (to the husband's family).

The " gettings ", it will be remembered, are what the woman brings to the marriage and remain with her. The *pĕmbawa* are what the man brings, and they return to his *waris* or at least with him to his tribe.

The pĕnghulu of Ayer Kuning has an amusing parody of this saying:

" *Chari ta'buleh bagi*
Dapatan ta'buleh tinggal
Pĕmbawa ta'buleh kĕmbali."

" The meaning is as follows: the *charian laki bini*, in other words the children, cannot be divided, they cannot be taken to another *suku*, the husband cannot take them with him, they must remain with the mother's *waris*. The *dapatan* in the

[1] Datoh Jĕmpol gives yet another interpretation, " the man can give what he likes to his children at the time of divorce: that is the meaning of *suarang bĕrageh* ".

shape of the man's *tikar bantal* (bedding) being part of the woman's house, cannot be kept but must go back to the man's *waris*. The *pĕmbawa* in the shape of the *mas kawin* (the bride-price), is kept" (Appendix XXXVI). This parody is claimed to be an ancient saying.

Inche Mohamed Pilus describes the division thus: "In the case of divorce the property is divided into two. After making good the *pĕmbawa* and the *dapatan* the following things have to be separated off before the division (of *charian laki bini*) takes place: the house, the woman's jewels, her clothes, the man's clothes and weapons.

"The house is a frequent source of dispute, as it may have been rotten when the man married and completely rebuilt by him on a bigger scale. He nevertheless has no claim on its value. On the other hand, if the house has deteriorated the woman has no claim for the amount of the deterioration. This would apply even in the case in which the house was destroyed by fire a few days before divorce: it is an act of God (*kĕmalangan*)" (Appendix XXVII).

The former principle, as to the separation of certain types of property before proceeding to the equal division of the remainder of the conjugal acquisitions, was first clearly enunciated to me by the Datoh Jelĕbu (Appendix XXIII). (Though, as we shall see later, Parr and Mackray say practically the same thing.)

"Things bought by the married couple in the way of clothes, jewellery, krises, cannot be divided:

"*Yang bĕr-tangkăi buleh di-jenjen* [from *jinjing* = to carry a light burden in the fingers—G. de M.]
Yȧng bĕr-tali buleh di-elȧ
Yȧng di-bilang di-bȧhgi."

(Things that have handles may be carried away
Things that are strung together may be pulled away
Things that can be counted are divided.)

"The man keeps all clothes and weapons he has bought out of the joint earnings, the woman all her jewellery, even though valued at thousands of dollars.

"Rubber land is *pĕrniaga'an* (an article of trade) and can be divided, but the *tapak rumah* (the site of the house) including the *kampong* in which it stands, cannot be *bilang* (counted) and so remains with the woman, however much work the man has put into it.

"It is only when all the clothes, jewellery, houses, etc., have been separated, taken by the person to whom they should go, that the division of the remainder, the *pĕrniaga'an*, is carried out."[1]

This theory has since then been fairly consistently confirmed as applying not only to divorce, but to inheritance by the remaining partner on the death of the other, and to inheritance by children.

This general principle that certain categories of the joint acquisitions of married partners shall not be thrown into the melting pot for the purpose of distribution, contains within it the specific principle that the house *and the land on which it stands*, even though it be jointly acquired land, shall also be withheld from the melting pot and shall be the property of the woman. Parr and Mackray do not consider this case of the house standing on jointly acquired land. The existence of this principle is confirmed[2] in the joint statement of the Datoh Johol the Datoh Ulu Muar and Inche Mohamed Pilus, as regards the *kampong* in which the house stands (Appendix XXXVII).

We have already seen that Inche Mohamed Pilus asserts that the house is the woman's, together with its improvement or depreciation. None of the usual[3] reckoning of the value of the appreciation of *dapatan* acquisitions can take place. We have already met the principle of the woman's sole right to the house built upon her ancestral land. This principle now under discussion is an additional provision which covers

[1] Appendix XXIII.

[2] The penghulu of Ayer Kuning maintains that while the house is absolutely the woman's, acquired land of all sorts is divided equally. More careful inquiry might or might not have elicited that when a lower limit is reached, one piece of land on which stands the house, the whole of it goes to the woman (Appendix XXXVI).

[3] I anticipate that later research will confirm my supposition that this is usual.

the case of the comparatively poor families who have not sufficient ancestral land to be able to give each of their possibly numerous daughters an ancestral *kampong* on which to build a house. It is probably almost exclusively under such conditions that a couple set out to establish themselves in a new clearing in the forest. *This custom provides that widows and divorced women shall never even under these circumstances be left without a house to live in and the plot of land, orchard or other plantation, on which stands the house.*

It is a principle sociologically of very greatest significance, an insurance for the future of the race such as exists to the best of my knowledge nowhere outside a matriarchal tribe—certainly not in Europe. In this particular Rembau can pride itself of being ahead of England.

It is a question whether a marked variant of this custom can be proved in the case of Jĕmpol. The Datoh Jĕmpol says: "The house cannot of course be divided and goes to the woman, *but she has to pay*. . . . The *pĕmbawa* and *dapatan* must be made good. The house, being *dapatan*, must be made good. If it is in bad order, the man must repair it, and if necessary rebuild the house on the same site." This contradicts the above-stated principle in that the woman has to pay half the value of the house by deductions from the rest of her share. It is also in contradiction with Inche Mohamed Pilus's contention that whatever the duties of a man may be with regard to the house during the continuance of marriage, at its dissolution they cease, and no argument is allowed: the house must be taken as it stands: no claim can be allowed for either appreciation or depreciation.

The principle that the house with the land upon which it stands is utterly and completely the woman's must be taken as the general custom. In accordance with the principle discussed in the introduction that a local variant of a general custom must be strictly proved, the onus of proof is on Jĕmpol. As regards the other contradiction as to whether alteration in the value of the house shall be reckoned, the lists are still open for jousts between further evidence.

With the above qualifications Parr and Mackray's account

is so clear that I cannot do better than repeat the whole of their description with glosses in order to make the custom clear as daylight to my readers.

"The customary rules regulating the division of property on divorce are four: of which the three latter explain the first (p. 90).

"*Bersoarangan, beragih*
Ber kutu belah:
Charian bebagi
Dapatan tinggal
Pembawa kembali." (Appendix I, saying XI.)

He gives two translations:

"On separation to each what is due,
While at one, share alike.
Divide earnings,
Relinquish the wife's separate estate,
Take back effects brought." (Appendix I, saying XL.)

And a further translation in the shape of four rules:

"1. On separation divide, while together share alike.
2. Joint earnings are divided.
3. The separate estate of the wife remains with her.
4. Property brought is returned to the bringer."

A comparison with the various interpretations of the first two lines at the beginning of the chapter will interest the Malay scholar, and give a concrete example of how difficult it is to base the interpretation of the *adat* on ancient sayings.

Rule I. "Division of property must be made before, or at the moment of the divorce. If a man divorces his wife without demanding a division of property, he loses all claim to the share to which custom entitles him: but once a division has been made it holds good, even if cohabitation is resumed before the divorce becomes final. The division must be made in the presence of the elder or tribal chief. Hence a man divorcing his wife by letter, forfeits his share of the marriage earnings."

Rule II. " As married life may result either in loss or gain, the earnings include debts as well as assets. Modern usage tends to overlook this fact. But on a division of property at divorce a wife is entitled to apply any acquired asset to reimbursing herself for debts of her husband which she has met ; and it is unquestionable that her separate estate is liable for one-half of all debts incurred by her husband during marriage that remain still outstanding on divorce." [1]

Here I think Parr and Mackray have gone astray. They have described the custom throughout as though it were practically identical on divorce and on the occasion of the death of a partner. I have furnished sufficient proof that though this was probably true of earlier phases of the custom, it is no longer true now. There are great differences, and among them is this, that on divorce equal division of divisible property takes place whether or not there are children. This is the case even in Jelĕbu, where the claim of the children is stronger than anywhere else.

" Again, the rule directs that the earnings be shared, but not that the two shares be equal." [2]

This way of stating the matter tends to confuse the issues. As Parr and Mackray themselves explain later, the principle of equal division does apply. It is only applied, however, after certain categories of property have been separated off as not susceptible of division.

" The equal right of husband and wife to earnings terminates with the marriage. The validity of a claim by either party on divorce to any given item of acquired property depends on the nature of that item. Custom excludes certain kinds of property from the division. A woman's claim to the house her husband has built for her, to all improvements to ancestral land, and to jewellery and clothing bought her, is indefeasible. The husband can claim no share in respect of such possessions, but has, on his part, the sole right to male ornaments and clothes, to weapons and fire-arms purchased during marriage.

" The right of the mother to the custody of the children on divorce, is based on a similar convention. Custom regards

[1] Parr and Mackray, p. 90. [2] P. and M., p. 91.

the children as a class of marriage earnings but as a class wherein the principle of sharing on divorce is inoperative.[1]

" Subject to the qualifications of the rule sharing on divorce the property acquired during marriage is absolute except in the case of the parties to a marriage by agreement (*nikah ta'alik*), when the husband can enforce no division. Even on a divorce obtained by the woman for lack of conjugal rights, she is entitled to her share of earnings. Nor is her share diminished by her misconduct, should a man divorce his wife for adultery. As an outraged husband may refuse to divorce his wife, the possibility of a claim to a division of property being proffered rests with him ; if he elect to divorce, he must abide by the consequences of his action."[2]

Rule III. " At no time does the husband acquire any rights over the separate estate of the wife. Hence even if the value of that property be enhanced by improvements he has made, by additions to the house, or by trees planted in the *kampong*, the wife resumes sole interest therein on divorce."[3]

I contend that the increase in value of land acquired by the wife during her maidenhood or since a former marriage should be brought into the reckoning provided that it is not the land upon which stands the house. See the chapter on *Pendapatan*.

Rule IV. " The claim of the husband, or should he be dead, of his family, to effects brought by him to his wife's home, is sustainable on divorce only if such property is duly declared by him at the time of marriage. His family seldom find it an easy matter to recover their property in cash which the husband was permitted to remove. The wife naturally alleges that it was all spent long ago in bringing up the children. But if the man's family can point to the wife's investment in mortgaged lands or buffaloes, their claim to recover by sale is valid."[4]

I have dealt fully, in discussing bachelor acquisitions, with this matter of the necessity for declaring, and have given my

[1] P. and M., p. 91.

[2] " *Vide* case of Sohor Suku Batu Hampar decided 1907, who sold up *pencharian*, and appropriated the entire proceeds after divorcing his wife convicted in a Court of Law of adultery. Lower court's order for division of property upheld by judicial commissioner on appeal."

[3] P. and M., pp. 91, 92.

[4] *Ibid.*, p. 92.

opinion that failure to declare property only invalidates a claim if the property is of a type which requires counting or measurement for its identification or determination.

" After the divorce or death of his wife, his mother's family resume responsibility for a man, and are entitled to profit by his subsequent acquisitions until he re-marries. Even if he elect to live as a widower with his children in their mother's house, his sisters and not his children succeed to any property he leaves at death, if an indisputable offer of a home has been made to him by his mother's family. His refusal of that offer does not extinguish the right of the sisters to inherit his estate, but they are liable, on succession, to pay or refund the cost of their brother's funeral." [1]

In view of the discussion in the chapter on bachelor acquisitions the above statement is inaccurate. When a man goes to live with his mother or sisters his movable acquisitions are thrown into the common fund. But land opened up by him can eventually be inherited in whole or in part by the children of a subsequent marriage under the circumstances I have detailed—especially if that subsequent marriage is terminated not by divorce but by death, and if the property in question has increased in value during marriage.

[1] P. and M., p. 92.

CHAPTER V

ADOPTION

A COMPARATIVE study of adoption does not throw much light on the custom of adoption in Něgri Sěmbilan.

In India, in general, the object of adoption is to obtain a son to perform the necessary sacrificial offerings for the adopter and his ancestors. This would however appear to have been a Brahmanical innovation. It is connected with the fiction of a new birth into the adoptive family. There is a nearly obsolete form of adoption, called the *kritrima*, which is characterized by the absence of religious ceremonies, and the absence of the fiction of a new birth, which appears to have arisen from purely secular motives and to have existed anterior to, and independent of, Brahmanical theories.[1] The peculiar Nayar form of adoption, "adoption by taking into the family", would appear to be closely connected with this *kritrima* form. It takes place exceedingly rarely and is for the purpose of perpetuating a *tarwād* which is on the point of extinction. It is interesting to the student of Něgri Sěmbilan chiefly because of its disregard of principles which to myself at least appear to be kept so strongly in view in Malaya.

The first principle is not one of these. Lewis Moore says that the person or persons adopted must be of the same tribe or *vamsham* as the adopter.[2] (It is peculiar that this word should be mentioned nowhere else by him, not being included in the glossary, and should not be mentioned either by Mayne or Thurstan. The Nayar tribe is usually spoken of as a *kulam*. I take it that the *vamsham* is a very large unit.) But there is worse to come: he can adopt and by his adoption

[1] Mayne, pp. 266–70.

[2] *Vide* Mayne, p. 272. In the course of the case quoted two adoptions in 1867 and 1885 were proved in which the last males of a *tarwād* adopted three females.

perpetuate a *tarwād* even when there is no longer a surviving female member thereof! That at least is my interpretation of the judgments in the case described by Lewis Moore,[1] which went to the Privy Council, and in which adoptions were held to be invalid solely on the ground that the *karnavan* had not consulted his younger brother, the only other surviving member of the *tarwād*.[2] The point that there was no surviving female member does not appear to have been raised. If it had been raised would it have been claimed that the adoption was to, and on behalf of, the already dead female members?

From this most peculiar state of affairs I make the following deductions:

(i) That in the process of replacement of a female by a male manager of the family the male manager took over the former's functions wholesale and uncritically, without considering whether any given function was incompatible with his sex. He took over in fact more than the managership. We can best describe his position as being constitutional lord and master of the *tarwād*.

(ii) Whereas Nayar adoption is probably correctly described as purely secular in origin, Malayan adoption would appear to share with Hindu adoption the theory of a mystical re-birth. The blood sacrifice which I shall describe later, and which does not show any signs of having been a ceremony of propitiation of any supernatural power, probably symbolized a blood connection between the two parties.

Mayne quotes [3] the evidence of a man to the effect that it was usual for the sons of the adopter to marry the females who were adopted. This witness may have been mistaken, as his line of argument did not fit in with other expert evidence, but if his evidence was reliable we are faced with the phenomenon of natural and adopted members of the same exogamic unit marrying each other! This in Malaya would constitute incest, the most heinous crime it was possible to commit. One wonders how adoption can have meant anything at all among the Nayars if such marriages were not considered incestuous.

[1] *M.L.C.*, pp. 34–8.
[2] Also mentioned by Mayne, p. 272.
[3] Mayne, p. 273.

One other fact points towards the Nayars having in their custom of adoption lost the emphasis on exogamic tribal units: whereas in Nĕgri Sĕmbilan adoption entails complete severance from the natal tribe, among the Nayars the question is entirely dependent upon agreements made at the time of adoption.[1]

The above represents all the information I can find about adoption among the Nairs. Wilken gives no information at all about adoption among the Mĕnangkabau Malays. We shall now turn to information collected in the Malay Peninsula itself.

A glance through the evidence collected on this subject will show what a very high degree of confusion and of at best apparent contradiction exists in the peninsula on this matter of adoption.

There would appear to be marked local differences. Whereas Rembau has a highly developed custom of adoption, Jĕmpol claims to have no formal adoption whatever, only the informal adoption of close relatives of the same tribe and family.

As we shall see, Parr and Mackray maintain that an adopted individual can never be eligible for any tribal dignity, while the Datoh Jelĕbu and the Datoh Gempa Maharaja (Rembau, Appendix XIX) maintain the opposite.

What Parr and Mackray have to say on the subject is as follows:

" No one could live in Rembau unattached to a tribe or without increasing by his advent the importance of some tribal chief. The new settler had no free hand in the choice of his tribe. Custom laid down strict rules for the allocation of the stranger—the settler from other countries than Mĕnangkabau. He had, as the saying records, his allotted place, as a boat is moored in the stream. The Jambi man was absorbed into the Batu Hampar tribe, the Javanese entered the Biduanda Suku, the Siamese became a member of the Paya Kumboh tribe, and the Kampar man joined the Suku Tanah Datar" (P and M., p. 5).

" Permanent residence in Rembau necessitated entrance into some one of the twelve tribes of the federation. But inclusion in a tribe, while entailing obligations, does not confer

[1] Mayne, p. 273.

full tribal rights. Only a full member of a tribe is eligible to the post of *ibu bapa* or *lĕmbaga*, or can demand the higher marriage fee obtaining in certain of the elder tribes. Full membership depends on the ability of a claimant to trace his descent back to the founder of one of the original families (*pĕrut*). The tribes form close corporations. . . . These corporations may accept additions to their numbers, but with the sole end of thereby enhancing the value of tribal property. . . .

" Adoption of a child is subject to the consent not only of the material relations '*waris*' of the adopted, but to the permission of his *lĕmbaga*, and involves complete severance from the tribe of the child's birth " (P. and M., pp. 26, 27).

This account pictures a state of affairs which exists no longer, that of a pure Malay State. Since then there has been a huge inroad of foreigners, and the system of Government has changed; the country is no longer governed by *lĕmbagas*; it is no longer necessary to be under the formal protection of a *lĕmbaga* in order that life and property may be safe. There is, in fact, no need for a foreigner to be affiliated to a tribe in order to live in Rembau.

The need which at one time did exist for foreigners to obtain adoption in order to obtain a satisfactory political status has been paralleled the world over among primitive communities. Sir Henry Maine has developed at some length in his *Ancient Law* the theorem that had the legal fiction of adoption never existed, " the primitive groups of mankind could not have coalesced except on terms of absolute superiority on the one side and absolute subjection on the other. With the institution of adoption, however, one people might feign itself as descended from the same stock as the people to whose *sacra gentilicia* it was admitted; and amicable relations were then established between stocks which, but for this expedient, must have submitted to the arbitrament of the sword with all its consequences."

It will no doubt strike the student of Nĕgri Sĕmbilan history that adoption was not the only legal fiction which operated in the manner described by Maine. Far more striking is the legal fiction, to which I have invited attention in an earlier chapter, of the derivation of political and territorial rights through intermarriage with aboriginal women by the importation of the matriarchal theory. It was this fiction which made possible the bloodless invasion of the Mĕnangkabau hordes.

The present state of affairs, as I have said, is most obscure, and yet I think that by a process of searching for general

principles, such principles can at last be found which harmonize a great deal of this evidence, which make it clear in how large a measure some of the apparently contradictory evidence consists in half-truths, and which thus justify themselves as sound working hypotheses.

We have already seen that the political structure of these matriarchal groups is tribal, the political relationship between individuals being based on blood relationship, or descent from one of a definite member of ancestresses. We have also looked on the picture of the country drawn for us by Parr and Mackray when it was purely Malay ; when incoming foreigners, in order that their life and property might be safe, had to come under the protection of a *lĕmbaga,* in other words had to become members of a tribe. It follows that in order to obtain the protection of a *lĕmbaga* they had to enter into theoretical blood-relationship with the members of a tribe and that that blood-relationship could only be obtained by the acquisition of a mother within a tribe. (I shall go further into this point later.)

It is also arguable that foreigners had to be adopted into one of the tribes in order to marry a native woman. Investigation is required on this point,[1] but *a priori* I should be prepared to wage a moderate sum that this was so. We shall at least not be far wrong if we postulate that if a foreigner wanted to settle down in Rembau, or any other of the nine states, particularly if he wished to marry a native woman, he must become affiliated to a tribe, and that the method of affiliation was by adoption by a native woman as her son. Adoption was merely a legal fiction for affiliation to a tribe. There could in such cases have been no question of inheriting the adoptive mother's property. It would even have been a great disadvantage if a man acquired by adoption a lien over this property. He would have found it hard to find a woman to adopt him.[2]

It is also clear that at the time of adoption the possibility

[1] Some evidence was obtained later, in support of this view, as will be described a little further on.

[2] We can presume that his dealings were usually with men. Having become friendly with a Rembau man he would say to the latter, "What about my joining the tribe ? Could you put me up for it ?" The answer would be, "Certainly, I shall get my wife to adopt you." (But see the account by Che Omar.)

of election to a tribal chieftainship would be quite outside the thoughts of a foreigner. It would be the most natural thing in the world for him to be considered ineligible.

I suggest that this is an accurate picture of the "*kadim adat*" as set forth in a letter I have seen, written by the present Datoh Rembau to Mr Pengilley, then Assistant District Officer Rembau, and in the statements, contained in the appendices, of Datoh Gempa (Appendices XXXII and XXXIV), of the Datoh Mĕrbangsa (Appendix XXXIV), and of the ex-Datoh Rembau (Appendix XXIII).

They all differentiate between the two main varieties of adoption, *kadim adat* and *kadim adat dĕngan pĕsaka*. The former is less formal than the latter in that only the tribal chief need be present, not the *Undang*, and that goats and not buffaloes are eaten at the feast. The former confers no rights of inheritance of property, though it makes gifts of *acquired* property (including land) lawful during the lifetime of the adoptive parent. The ex-Dato Rembau specially says "the only use of it is to bring the child under the same *lĕmbaga* (*ter-lingkongan limbagō seja*)."

Datoh Gempa says: "There are two sorts of *kadimkan*, *kadim adat* and *kadim adat dĕngan pĕsaka*. The differences are as follows: In *kadim adat* the adopted child gets what is given during the lifetime of the adoptive parent, in *kadim adat dĕngan pĕsaka* the child can get ancestral property and can inherit. In *kadim adat* the child cannot be given ancestral property."

Datoh Merbangsa: "There is a difference between *kadim adat* and *kadim pĕsaka*, but they both refer only to adoption from outside the *suku*. In the first instance the chiefs, the *lĕmbagas* and *buapa'* (*ibu bapa'*) of the respective *pĕrut* are called. No property can be inherited, but either acquired or ancestral property can be given during the lifetime of the adoptive parent." Ancestral property could presumably not be given if it was a male who was adopted. Presumably also *kadim pĕsaka* is the form of adoption he had described earlier in his statement: "A buffalo has to be slaughtered and the *Undang* invited."

The ex-Datoh Rembau: "It is true there are two sorts of adoption:—*Kadim adat* can be carried out in the presence of *lĕmbagas* with the slaughter of goats. This gives no claim of any sort over property. The adopting person cannot give land during his life to the adopted child. The only use of this form of adoption is to bring the child under the same *lĕmbaga*.

"*Kadim adat dĕngan pĕsaka* is carried out in the presence of the

Undang with the slaughter of a buffalo. This gives rights over property."

It will be noticed that though there is general agreement, quite a lot of contradiction in detail is left.

As a check on my generalizations I subsequently took the statements contained in Appendices XXVIII and XXIX. These statements confirm my conclusions. Inche Suboh states: "Foreigners can be adopted without inviting the *Undang*. But they cannot obtain ancestral property. The acquisitions they have brought, provided they have been declared at the time of adoption become their *pĕmbawa*" [and are therefore subject to the rule that they go back whence they came].

The Datoh Gempa Maharaja and his wife say: They are two sub-varieties:—*kadim adat* for which goats are slaughtered and the presence of *lĕmbagas* is necessary. The adopted person can get property but is not eligible for chieftainships. *Kadim adat dĕngan pĕsaka*: a buffalo is slaughtered and the *Undang* is present. The adopted person is eligible both for chieftainships [1] and for the inheritance of ancestral property. Only women can be adopted in the form *adat dĕngan pĕsaka*. Men can be *kadim adat*—and women also in the event of the *waris* not agreeing to their adoption *adat dĕngan pĕsaka*.

The account of an actual adoption of a foreign couple in Sungai Ujong is given by Inche Omar: "A man from Penang Island came with his wife to live in my *kampong*. When he came he learnt about the procedure of adoption and looked for a woman to adopt him. The adoptive mother took him to the *lĕmbaga*. When he had told the chief all about himself he prepared a feast at the house of his adoptive mother. In the course of the feast there were recitals of ancient histories and of the *perpateh* custom. They recited the saying:

> "*Dĕkat mĕnchari waris*
> *Jauh mĕnchari suku.*"
> (When near one seeks for relatives
> From afar one seeks for a tribe)

and many other sayings.

"Then the woman carried round a tray of betel leaf making the acquaintance of the *buapa'* (elders) and tribal chief, so that they should know she had entered the *suku*. The husband also came round to make the acquaintance of the elder, the

[1] Presumably what is meant is that the adopted person can transmit eligibility to a chieftainship.

tribal chief and the *waris* of the adoptive mother so that they should know that he had become *orang sĕmĕnda* to that tribe (a man marrying into the tribe). The saying goes "*Orang sĕmĕnda di suroh pĕrgi, di panggil datang*" (The man marrying into a tribe is at their beck and call).

"*The woman having been adopted, the man thereby becomes orang sĕmĕnda, and there is no need to adopt him also*—the husband is under the jurisdiction of the *limbaga* of his wife's tribe.

"People (so) adopted cannot inherit ancestral property, either *pĕsaka pada undang* or *pĕsaka harĕta*."

The general conclusion from all the above is that *kadim adat* is a form of adoption which has as its function the introduction of foreign men to a tribe, and thus to social though not entirely to political equality, in the absence of a quasi-tribal unit ruled over by a *Datoh Dagang*, a chieftain over foreigners, of which foreigners could become members without adoption.

Nevertheless this function has been extended in one direction. In cases in which the *waris* have refused to give their consent to the more potent form of adoption *kadim adat dĕngen pĕsaka*, it is by some said to be possible to adopt in this way a woman belonging to another tribe. The woman thus adopted does not, however, acquire the right to inheritance of property, though she may receive gifts *inter vivos* of acquired property and eligibility to tribal dignities cannot be transmitted through her. Presumably by adoption into the new tribe she loses the corresponding rights in her old tribe. She therefore bears a serious blemish which would carry on to her descendants. We can presume that this type of adoption would take place only very occasionally, in the case for instance of a family squabble, with a rich old woman quarrelling with her daughters and endeavouring to introduce a poorer girl from another tribe to look after her in her old age and to inherit from her. In adopting this view I am definitely holding that the Datoh Merbangsa's statement that ancestral property can be given is overborne by the weight of evidence.

This form of adoption is characterized by the absence of the *Undang* and by a buffalo not being slaughtered. In view

of local variations, however, as in Miku and Ayer Kuning, it should not be taken as the invariable rule that adoption in the presence of a *lĕmbaga* and with a feast of goats' meat implies *kadim adat.*

I have to admit that Inche Mohamed Pilus' statement (XXVI) is strongly adverse to me in that he says that the differentiation between *kadim adat* and *kadim adat dĕngan pĕsaka* is of recent growth.

His statement would, if proved to be literally correct, tear the whole fabric of my theory. As this is a matter which I am not in a position to solve by inquiry I am forced to have recourse to conjecture. I would suggest that he was not thinking of the adoption of foreign men at all but of a tendency which was most probably of recent origin of differentiating between two varieties in the potency of adoption of girls from one *suku* into another. We have met the statement that when the *waris* do not agree to the adoption of a girl *adat dĕngan pĕsaka,* she can be *kadim-kan adat* only, so as not to be eligible for the inheritance of ancestral property, the ceremonies being differentiated by the presence of *lĕmbagas* only and the sacrifice of goats only instead of the presence of the *Undang* and the sacrifice of a buffalo. If I interpret Mohamed Pilus aright he maintains that every element of that statement is wrong: There was until quite recently only one way of adopting a girl from a different tribe: if the adoptive mother's *waris* did not agree to the proposed adoption that was an end of the matter; an inferior variety of adoption not depending on the consent of the *waris* and not conferring eligibility for the inheritance of ancestral property could not be resorted to: adoption simply could not take place. If the objection came from the side of the girl's original tribe the objection could be dealt with by the *Undang.* Furthermore, it was not necessary for the full adoption of a girl from one *suku* into another either for the *Undang* to be present or for a buffalo to be sacrificed: the *Undang* was only *necessary* in the case of an objection by a *lĕmbaga,* and the question of whether one or two goats or a buffalo were slaughtered depended primarily on the means of the adopting person.

I am very much inclined to think that the above is a correct account of the old Rembau custom of adoption from one tribe into another.

Before proceeding to describe *kadim adat dĕngan pĕsaka* I propose to discuss an informal variety of adoption which leads up more naturally to it.

There is quite an everyday reason for adoption not mentioned by Parr and Mackray: *the need of an old woman who has for some reason no daughter in the house to obtain a girl to look after her.* In an earlier chapter I have stated the general principle that the duty to support carries with it an interest in the property. By the working of this principle a girl, by her companionship and help to an old woman, acquires a claim to inherit her property—that is, provided she is eligible to inherit it. Eligibility to inherit ancestral property depends chiefly on membership of the same tribe, possibly in certain circumstances also on membership of the same *pĕrut* (a point I have insufficiently investigated). *A priori*, therefore, the girl obtains a claim over the adoptive mother's property even if there is no ceremony of adoption provided that they both belong to the same *suku*. Extending slightly the argument that I have raised in my judgment in Appendix XX, it seems clear that as tribal dignities are more important in these people's eyes than property, it would follow as a matter of course that, as an informally adopted woman is a perfect channel for passing on eligibility to tribal dignities, so also is she a perfect channel for inheriting and transmitting tribal property.

Though I have made rather heavy weather in my judgment in Tampin Land Case 7/1926 (Appendix XXI) of the proposition that adoption is fully operative without a formal ceremony so long as the two individuals are members of the same tribe there can be no doubt that the proposition is fully proved therein. It is supported by the Datoh Jĕmpol (Appendix XL) and by the Datoh Johol, the Dato Ulu Muar and Inche Mohamed Pilus (Rembau) in their joint statement (Appendix XXXVII) and can without much doubt be taken as a custom generally valid throughout matriarchal groups.

According to Inche Mohamed Pilus, " If the adopted child

is of *the same pĕrut* there is no need to *kadimkan* ; the child has full rights of inheritance without the ceremony " (Appendix XXVI). " Money, padi and buffaloes have however to be declared (at informal adoption) " (note to Appendix XXXVIII).

Inche Suboh (XXVIII): " An old woman adopting *a girl of the same suku* can do so with or without a feast. The absence of a feast does not invalidate the adoption. The adopted child can inherit ancestral property also on the principle '*sĕdab sudah pĕnat*' (on account of her exertions in looking after the old woman)."

Datoh Gempa (Appendix XXIX): " An old woman can take *a girl of the same suku* to look after her, provided she has no daughters already, with or without a feast. The girl can inherit provided there are no objections [on the part of the *waris*]. But the objection has to be made during the old woman's lifetime. If she does not inherit a *share* of the property she gets payment for her work in looking after the old woman.

The Datoh Johol with Datoh Ulu Muar (XXXVII): "*A child of the same suku* can be adopted without ceremony and thus acquire full rights of inheritance of property. Even though the adoptive mother have children of her own already she may adopt a child provided none of her own children are there to look after her; and the adopted child should inherit a share of her property. *A child of another suku* must be adopted with full ceremony, inviting the *Undang*, slaughtering a buffalo, etc. The ceremony is *chĕchah darah* (dipping into blood)."

Jempol. Informal adoption is slightly different. According to the Datoh Jempol (XL), there is no formal adoption and no one is ever adopted from outside the *suku*. Informal adoption takes place of relations so close that they would in any case have had a claim to a share of the adoptive parent's ancestral property.

Inche Omar (Sungei Ujong) gives an actual instance of this form of adoption: " My mother-in-law had a great-aunt named Haji Fatima. Haji Fatima had no sons or daughters but a number of nephews and nieces. She was particularly fond of one of her great-nieces, my mother-in-law, and took her to live with her. When she died she gave her rice field and the site of her house to her—without any formal adoption as she was already a *waris*. Instead of the property being divided among the many *waris* it was all given to one, her adopted daughter " (Appendix XLI).

There remains the case of the *adoption of a girl of another tribe* in similar circumstances, that is by an old woman who is alone in a house and with no near relation she can adopt. This must obviously be a very solemn occasion. No mere accretion to a tribe is involved; there is also severance from another tribe. A woman who has hitherto had inherent in

her the power of transmission of the eligibility to the dignities of one tribe ceases to have this power. She does not become an outcast, however; she does not by adoption acquire a blemish; she acquires in her new tribe the rights and powers she had in the old. This is in fact the "*kadim adat dengan pĕsaka*" characterized in general by the slaughter of a buffalo and the presence not only of the heads of both tribes but of the ruler of the State himself. (In Jelĕbu usually called the *kadim adat.*) [1]

It should be noted that I differ from Parr and Mackray as to the eligibility to tribal dignities. The explanation is simple. They had not realized that there were fundamental differences between the adoption of a foreign Malay and the adoption of a member of another tribe,[2] especially between a foreign *man* and a *woman* of another tribe.

The fact has indeed only been discovered by myself subsequently to my transfer from Nĕgri Sĕmbilan on pondering over the evidence. It is really highly desirable, particularly for the states other than Rembau, that another set of statements should be taken with this classification of methods of adoption in view—in order to see how far it is generally applicable, how, for instance, the existence of apparently only one method of formal adoption in Jelĕbu may be due to extreme rarity in the adoption of foreign Malays. It is quite

[1] Datoh Naning (a young man, who may perhaps not be very sound on the *adat*, denies entirely that this form of adoption is possible. He states that there are only two forms, *informal adoption within a suku* and *formal adoption* (with *chĕchah darah*) *of foreign Malays* "You cannot adopt a person from one *suku* into another. A person can (however) informally adopt under these circumstances and give acquired property." This sounds improbable, but unfortunately the evidence I have collected from Dĕmang Asah and Dĕmang Haji Abdul Latif is not clear enough on the point for a decision either way as to whether the inability to adopt a person from one tribe into another is a Naning characteristic.

[2] Inche Suboh in his statement in Appendix XXVIII is opposed both to myself and to Parr and Mackray: "*Kalau kĕrja bĕsar dĕngan undang orang Siam pun buleh dapat pĕsaka,*" which I take to mean "if there is a big ceremony with the *Undang* attending even a Siamese [woman ?] becomes able to transmit eligibility for tribal dignities". It might, however, only mean that she became able to inherit ancestral property. It may conceivably be the case that Parr and Mackray overstated their case, not knowing either of a difference between *kadim adat* and *kadim adat dĕngan pĕsaka*, and it is also *possible that the effect of this very potent form of adoption, though not originally intended to affect foreigners, has in fact been extended* to them. (It would presumably have been extended only to foreign *women* whom Nĕgri Sĕmbilan men wished to marry.)

conceivable that in certain States of the Federation entrance into a tribe was not necessary ; there may have been a quasi-tribal unit of foreigners under their own headman.

Subsequent to writing the above, profiting from a short visit to Něgri Sěmbilan, I took the statements contained in Appendices XXVIII, XXIX, and XXXIX to check the truth of my generalizations (and later still that contained in Appendix XLI).

As to the necessity of adoption in order to marry a Něgri Sěmbilan woman, there is an apparent contradiction.

> Inche Suboh and Datoh Gempa directly support my view: Adoption in practice though not in theory is necessary for marriage (D. Gempa, Appendix XXIII). " Foreigners who have no mooring rope such as have Naning men who have lived long in Rembau, must be adopted before they can marry. If they should not be adopted who would pay their debts ? " The Datoh Jelěbu appears at first sight to be oppposed to me : " There is no need," he says, " to adopt a foreigner for him to be able to marry a Jelěbu woman ". But he says later, " Foreigners all come in under the *Datoh Dagang* (chieftain of strangers), they are not adopted ". I would invite your attention to the fact that this is precisely the case which I had foreseen. I had said with special reference to Jelěbu, " It is quite conceivable that in certain States of the Federation entrance into a tribe was not necessary ; there may have been a quasi-tribal unit of foreigners under their own headman ". Further confirmation comes from Inche Omar (Sungei Ujong) : " When foreigners come in in numbers a *Datoh Dagang* is appointed. People under the authority of a *Datoh Dagang* do not need to be adopted. If foreigners come in one or two at a time they have to be adopted. No foreigner can marry unless either he is under a *datoh dagang* or has been adopted " (XLI).

It will be noted in the statement by the ex-Datoh Rembau (Appendix XXIII) that incidents of the ceremonial are taken as proof of adoption, in this case the presence of the ruler and the sacrifice of a buffalo are said to be the *sine qua non* of *kadim adat děngan pěsaka*. There is, however, contradiction on this point. I am fairly confident that these apparent contradictions represent local variations, and that they are due to specific local conditions. Take for instance the statement of the Datoh Mosa Said, an inhabitant of Miku, an extremely isolated *kampong*, which has never been visited by a Ruler of Rembau. He describes the adoption of two

girls from one tribe to another in the presence of the *lĕmbagas* and with the sacrifice of a buffalo but without the presence of the ruler. Nevertheless, Datoh Rembau Sĕrun himself held that the adoption was good. One can take it as a local Miku custom that, the ruler of Rembau never having set foot in the Mukim, the presence of the ruler is not necessary for a "*Kadim adat dĕngan pĕsaka*".

In Naning it appears that the presence of the ruler is also not necessary. It so happens that after a certain Datoh Naning had been deposed by the British the dignity was left vacant for nearly a century. It has only just been filled again.

Ayer Kuning (a mukim of Gemencheh, itself tributary to Johol) is again in peculiar circumstances. It is on the edge of the matriarchal country and, till the railway came through, most remote both from the general valley and from Johol. (It can now only be approached by road from Johol by a long, circuitous and bumpy road through Malacca territory.) Presence of the ruler was therefore impossible. The fact that only goats or fowls were slaughtered was probably due to its not being considered worth while to spend much money on adoption in the absence of the greater chiefs.

Yet another local variation is in the Jasin district of Malacca, also on the fringe of the matriarchal region, where the *adat* is in fact disintegrating rapidly. The ceremonial part of adoption has disappeared. Eligibility for inheritance of ancestral property has disappeared. A bastard form of adoption is left intermediate between *kadim adat* and *kadim adat dĕngan pĕsaka*. Dĕmang Haji Abdul Latib states: "There is only one kind of adoption here: with the slaughter of a goat and inviting the *lĕmbagas*. The child can inherit acquired property, but no ancestral property or tribal title. If there are other children *the adopted child ranks below them*. The adopted child can be given acquired property during the parent's lifetime, and the parent can give instructions that a small portion goes to the child on her death, but that is all. *There is no way of leaving ancestral property to an adopted child. There is no ceremony performed with the blood of an animal.*

Apart from such local variations it can be taken as proved sufficiently for the purpose of a sound working hypothesis that there are three types of adoption differentiated from each other from a logical point of view according as to whether

the person being adopted is a foreigner, a member of a different tribe, or a member of the same tribe.

There would also be a classification according to the efficacy of adoption which would partly correspond with the former. In the case of the foreigner the effect of adoption would merely consist in affiliation to a tribe, in the two latter cases it would lay on the adopted person the duty of support, and in return a right of inheritance of the adoptive mother's ancestral property and status within the tribe.

This classification is expressed in the terms *kadim adat* and *kadim adat dĕngan pĕsaka.*

In a primitive state of civilization it is natural that proof as to adoption and as to the variety of adoption should depend on the ceremonial. This tendency is manifest in the statement by the ex-Datoh Rembau. The presence of the ruler and the slaughter of a buffalo are said to be sufficient evidence that all was in order. In former statements made to me in 1920 I remember that great stress was laid on the minutiæ of ceremonial, what is called "*chĕchah darah*" (dipping into blood). I am not in a position to give any opinion as to how far it is necessary to inquire into this point in order to obtain sufficient proof of adoption. Some individuals have denied to me that *chĕchah darah* was necessary in Rembau—it is possible that there should have been a misunderstanding between us, that they had been thinking merely of informal adoption within a tribe.[1] There may, however, be local variations to take into account. The Pĕnghulu of Ayer Kuning, for instance, says that *chĕchah darah* has fallen into desuetude in recent years. Local variations in the method of *chĕchah darah* have also to be taken into consideration.

I have recorded two full accounts of *chĕchah darah* (literally "dip blood").

Rembau (Inche Mohamed Pilus):

"The Lĕmbagas of both tribes must be present (*di-adakan*

[1] As regards Jasin (Naning) Awang Haji Abdul Latib (XXX) says: There is no ceremony performed with the blood of an animal. Dĕmang Asah of the neighbouring district of Alor Gajah (Naning) states, however, a goat is slaughtered, prayers and charms are recited over the blood, which is sprinkled. The Datoh Naning: "*Kadimkan* with *chĕchah darah* is only done when adopting foreign Malays."

lĕmbaga timba' balek). There is a feast. Usually it is a buffalo that is slaughtered (by cutting the throat).[1] A little of the buffalo's blood is caught. A powder called *bĕda limau* is made from rice and saffron ground together fine. Limes (*limau langir*) are cut into quarters and pressed into a bowl of water. The people then all go down to the river. The two people, the mother and the child being adopted, rub their whole bodies with *bĕda'*. Then the *ibu bapa'* (elder) of the mother's *pĕrut* pours the lime-water over each of their heads. This is called *mĕlangē* (*mĕlangir*). On coming back from the river they *chĕchah darah*, both putting a finger into the blood.[2] While the two fingers are in the blood the *lĕmbaga* tells the adopted child that she has become a member of her new *suku*.

"*Ini hari Siti sudah jadi orang Sĕlĕmak* (*Sri Lĕmak*)
Chichir sama rugi
Dapat sama bĕlabō [*bĕrlaba*]
Pesakō sama digelēkan [*di-gilir-kan*]
Siapa bengko' makan sarong."[3]

"To-day Siti has become a Sĕri Lĕmak person,
What is frittered away is a loss to all,
What is gained is a gain to all.
Tribal dignities rotate among all,
Whoever goes crooked eats this oath."

"This saying itself is the oath referred to. The child herself does not pronounce the words" (Appendix XXVII).

Jelĕbu. The Datoh Jelĕbu's version is as follows:

"*Lĕmbagas* and the *Undang* have to be present, a buffalo slaughtered, money given to the Undang, rice distributed, according to the saying '*krĕbau sēkor, wang sebara, bras lima puloh*' (one head of cattle, $14, 50 gantangs of rice). The

[1] In another statement (Appendix XXVI) Inche M. Pilus says that the buffalo was first ceremoniously washed. This is a point of similarity with the Jĕlebu custom.

[2] In his other statements (Appendix XXVI) Inche Mohd. Pilus states: "both parties dipping a finger in the blood was a sign they had become one."

[3] *Makan sarong* is literally "eat the covering". Inche Mohd. Pilus said it meant "*makan sumpah*", "eat the oath".

buffalo is first ceremoniously washed, then slaughtered. The saying goes:

Darah di-kachau
Daging di-makan
Doa di-tampong
Sĕtia di-laboh.
(The blood is stirred,
The meat is eaten,
Prayers are offered up,
Oaths of fidelity are made).

"The meaning of this saying is as follows: After the *waris* have given their consent to the adoption (*waris menyuka*) a mark is made on the head of the adopted person with some of the blood collected from the buffalo as it was slaughtered, the meat of the buffalo is eaten at the feast and the two persons take oaths of fidelity to each other" (Appendix XXXVIII).

I did not ascertain to what extent those details in the two accounts which differ from each other are really complementary, being common to the *adat* in both places.

The feasting and the sacrifice of an animal appear to be fundamental features, both of them survivals from Heathenism. It is interesting to hear that in the Minehasa a feast is ordinarily all the ceremony necessary, though "where Heathenism still prevails, the contract is occasionally strengthened by a sacrifice" (*Mal. Soc.*, p. 65).

I want to return to an important matter of principle. My argument throughout has been that, as the women are the living chain of the tribe, adoption must be by a woman. Adoption by a man would be pointless. That this is a correct view is supported by the little evidence I have taken on the point. Datoh Mōsā when he wanted to give some land to two girls "adopted them to" a female relation of his. This case is peculiar as the adoption by the woman was obviously the most patent of fictions. The two girls died. Adoption was proved and the girls' blood relations prevented from inheriting the bits of land. But Datoh Mōsā Saïd got them

himself! This was surely a bit of bluff; the adoptive mother should have got them.

The Datoh Jelĕbu touches on this point in both his statements. "*Kadim* is always to a woman—it is only to a man when of the other sort, '*kadim shara*', under which *pĕsaka* cannot be inherited (Appendix XXXVIII). It is important to bear in mind that, as its name implies, this form of adoption purports not to be under the *adat* at all, but under Mohammedan Law, *hukum shara*." It is usual [1] for women to adopt; if men adopted their property could not be inherited by the adopted person [2] (Appendix XXXIX).

The ex-Datoh Rembau's statement to me about a most remarkable case, that of Inche Talib's second wife, if accepted as trustworthy, would entirely controvert my view. The case was tried by Mr. E. N. Taylor (Collector Rembau). It is an important one from many points of view, partly as being one of the rare Rembau cases in which a considerable amount of property is involved. It is presumably occupying an important place in the book he is writing. I have not read the notes of evidence, but I know a little about the circumstances. Talib married the woman after her adoption. According to Mr Taylor the evidence disclosed that she was adopted to a woman who was already dead! According to the ex-Datoh Rembau she was "*kadim-kan ganti bini tua*", i.e., adopted to *replace* the former wife (!) This strikes me as wonderful. He adds that you can *kadimkan* anyone to anyone else: to be their brother or sister, not necessarily to be their son or daughter. In the first place it should be noted that Talib has for many years been in the very closest relations with old Haji Sulong, and that the latter would no doubt be sorely tempted to stretch a point in order to help him in getting this property. As to the adoption being sufficiently proved by the presence of the Undang and the slaughter of a buffalo, it did so happen that the present Undang who was present at the ceremony was little more than a boy at the time, that he had only recently been appointed ruler of Rembau and knew little about the custom.

Quite apart from the doubt thrown upon the deponent's statement for the reason given above there is another reason which must carry great weight, namely that if even among people

[1] The word used was *lazim*. It is a word of Arabic origin. When correctly used it is very much stronger than *ghalib* which means "usually": but *ghalib* is not often used in Nĕgri Sĕmbilan. So I have given *lazim* the weaker meaning.

[2] Adoption by men cannot altogether be denied. Dĕmang Asah (XXIX) says: "It is possible for a man to adopt a woman as his *waris*." Such a phenomenon strikes me, however, as so thoroughly alien to the spirit of matriarchal custom that I cannot help but think that such occurrences must be recent and purely local developments.

following endogamic parental customs the adoption of brothers and sisters is unknown, it is inconceivable that it could be the custom among a race following exogamic matriarchal custom. Wilken writes on the subject of the Alfuros of the Minehasa: "This custom is so general that, as Graafland declares, it is almost impossible to describe the life of the Alfuros without describing him as the adopted child of others, or as himself adopting children. Even if parents have children of their own, they probably have a preference for some young man or other and adopt him, sometimes even favouring him before their own children. Should anyone be disposed to adopt an old man as father, or an old woman as mother, he makes the desire known, and, on their consent, he undertakes to assist the old people, as a right-minded son should do, and at their death inherits from them. In the same way, should anyone desire to bind a young person to himself by a similar agreement, he can declare such a person to be his son, and that person then enters upon the same rights and obligations as the man's own children" (*Mal. Soc.*, p. 65). If such a custom makes no provision for the adoption of brothers and sisters it is pretty clear that the claim that such adoption is possible in Rembau is ridiculous, and that the whole of that part of the ex-Datoh's statement about Talib's wife is utterly untrustworthy.

The above was written before I studied adoption in Malabar. On p. 173 I have mentioned the extraordinary phenomenon in Malabar of an adoption by a man in order to perpetuate a *tarwād* of which there was no surviving female. My comment ran: "The point that there was no surviving female member [of the *tarwād*] does not appear to have been raised. If it had been raised would it have been claimed that the adoption was to, and on behalf of, the already dead female members?"

The similarity between the Malabar and the Rembau case is striking. Are they both but aberrant examples of the birth of a legal fiction under the stress of self-interest in a condition of society characterized by the weakening of the concept of matriliny? In the Rembau case at least the theory of matriliny is still there, but the application is lax.

PART IV

CONCLUSION

CHAPTER I

VALUES

I ADDRESS myself more particularly in this chapter to those for whom this book is primarily intended, to Civil Servants working in Nĕgri Sĕmbilan and Malacca and to English-speaking Malays of the same area.

I can assure both these classes that their influence on the *adat* is infinitely more far-reaching than they can imagine—whether they are interested in it or not. Conditions are so fluid owing to a variety of circumstances that they verily hold the ultimate destiny of the *adat* in their hands. Their support, their apathy or their ridicule may be decisive factors.

Under these circumstances it is incumbent on us to form an opinion as to the *value of the adat* and as to its adaptability to modern conditions.

§ I. THE VALUE OF INCORPORATING A TENACIOUS AND STRONGLY CHARACTERIZED BODY OF TRADITION

I propose to argue that any custom which incorporates and is based upon a firm body of tradition is for that reason alone of immense value, and that, all other things being equal, the value of a custom varies in direct proportion to its combined strength and "individuality".

It is only within the last quarter of a century that psychological research, extending itself towards the field of political philosophy, has begun to reveal not only the value but the necessity for a strongly anchored body of tradition in order to secure the *development of an organic racial* or national *mind* which, after all, is the essential element of civilization, and most necessary for the healthy development of civilization in its many aspects, material, civil and moral.

There is of course nothing new in the concept of the state

as an organism. In English political philosophy we have Hobbes' very famous book *The Leviathan.* After Hobbes' day the organic theory fell on evil days with the intensely individual conception of man broadcast by Locke and Rousseau. It was with the birth of philosophical ideas in biology, of the evolutionary theory in particular, in the nineteenth century, that the organic theory began to show its head again. "In his *Principles of Sociology* Mr Herbert Spencer draws a series of detailed analogies between the growth, functions, and structures of animals on the one hand, and of societies on the other." [1] But both he and Bluntschli, the other great "organist", base their theory almost entirely on minute *analogies of function and structure* which lay the theory open to such criticisms as "Where then is the backbone?" or to Tolstoy's criticism that it had no centre of sensation or consciousness. McKechnie himself in laying the foundation of an organic theory rises to broader universal principles. "The truth is that society may be, and is, an organism without resembling any animal organisms whatever: it is not only neither like a lion nor an elephant, nor a bacterium, nor a mass of protoplasm; but has characteristics which all forms of animal life utterly lack, and it wants characteristics which they one and all possess. . . . Plant and animal forms of life are thus merely two species of organisms, and by no means exhaust the species." [2] "Society is an organism not because it resembles any particular type of animal, nor even because it presents analogies to the elements which are common to all animals, but because it possesses the essential characteristics to be found in all organic life of which animal and plant life are merely lower phases." [3] "The organic theory of society seeks to combine the liberty and semi-independent existence of the part with the authority of the whole, and to explain their intimate and essential connection. Men are 'members of one another'. . . . Injure one and you injure all. The life of the whole pulses through all the parts, which in turn contribute something needful to the welfare of the whole.

[1] McKechnie, *The State and the Individual,* p. 9.
[2] *Ibid.,* p. 11. [3] *Ibid.,* p. 12.

"When it is said that society is organic, it is not meant that it is exactly like a plant or like an animal, but simply that the forms under which plants or animals live suggest a less incomplete analogy than those afforded by such words as 'chemical' or 'mechanical'."

M'Kechnie's theory still concerns itself with the *forms under which men live* and with the functional relationships between the individual and society.

The twentieth-century theory of the state as an organism bases itself on an altogether new foundation, that of the study of *the psychology of crowds*, stimulated by a psychoanalytic strain which has crept in with W. Trotter's *The Instincts of the Herd*. Possibly the earliest book on the subject is Dr Gustave le Bon's *Psychologie des Foules*. It is at the present day argued that human beings are sensitive to the emotional condition of their neighbours: so that when a crowd get interested in a common object they mutually affect each other's emotional condition with the result that a crowd as a whole will frequently behave very differently from the way in which any of its constituent individuals would have behaved if alone. The crowd acts as an organic unit, as possessing a *group mind* comprehending, and yet not identical with, the minds of its individuals. The war furnished innumerable instances of group emotion exceeding the imaginable limits of individual emotion in ardour, fear and barbarity. It should be particularly noted that in such cases the crowd acts as an organic whole chiefly by reason of that very intimate factor, group emotion, and not because of its functional organization. It is therefore an organic unit in an entirely new sense.

The concept of this group emotion has been developed by Professor McDougall in his *Group Mind* with particular reference to entities politically organized as nations. But some of his arguments at least are also applicable to smaller units within the nation. A dead level of sameness throughout a nation is an unworthy ideal. He summarizes his views shortly in *Ethics and Modern World Problems*: "Only by partaking in the life of an organized political community, held together

by ancient, firmly rooted traditions, ethical and political, has man risen from savagery; and only by further development and improvement of his ethical traditions and political institutions can he hope to rise above the very modest level he has so far attained" (p. 44). "Man can be induced to work consistently for the good of his fellow-men, and in harmonious co-operation with them, only by participation in the life of an enduring organized group—a group that has a long history in which he may take pride and an indefinitely long future on which he may fix his larger hopes. Identification of the individual with such a group is the only way in which the mass of mankind can be brought to live consistently on a plane of altruistic effort and public-spirited endeavour, observing high standards of social conduct such as must be accepted and must prevail in any community, if it is to flourish on a high plane, if it is to maintain and develop a culture worthy in any sense to be called civilization" (pp. 46–7).

Now, to anyone who has lived either in Něgri Sěmbilan or Malacca, and in other parts of the peninsula, it must be obvious how very much stronger the traditions are, and how much more pronounced the racial self-consciousness is in this small area than in the rest—and, also, how very much less these Malays have drifted from their moorings in the current of western civilization which has swept upon them. I may be exaggerating, but it certainly appears to me that this is one of the few parts of the peninsula where the growth of a truly Malay civilization can be hoped for, and the reason for my hope is chiefly the strength of existing traditions and the pride the people take in them. If, as there is a danger, the *adat* were to crumble, my hope would vanish. With the snapping of their mooring ropes these people would be far more perilously adrift than those who are merely dragging their anchors.

This is then the first element of value of the *adat*: tradition is all-important and the people subject to the *adat pěrpateh* have stronger and more closely-knit traditions than the Malays of any other part of the peninsula.

Now what about my proviso "all other things being equal"? Perhaps the *adat* is so very unsuited to modern conditions

that this consideration is sufficient to outweigh the advantage of maintaining an existing body of tradition?

I have to admit that for the rush-and-scramble, time-is-money population of America the *adat* would be completely unsuitable. But to a world which has outgrown the eighteenth-century idea that all men are born equal it will not come as a shock if I maintain that Malaya could not in a thousand years become another America. The many people who like myself have come into intimate contact with Malays, Indians and Chinese will support me in my contention that by comparison the Malays have not it in them to excel in either commerce or industry, nor, compared especially to higher-caste Indians among whom Aryan blood preponderates, have they the intellectual gifts to cultivate the deeper things of mind, to develop for instance a system of metaphysics. As for commerce the shiftlessness of the Malay in money matters make it absolutely impossible for him to adapt himself to the conditions of anything approaching even moderate-sized business. If we compare even the Tamil and the Chinese to each other we see a striking difference in financial outlook. The Tamil looks after the pennies so keenly that he cannot possibly get himself to make the big initial outlay which may be necessary either to launch a big business or, possibly, to secure an individual order. He has nothing of the faith of the Chinaman who, according to report, will invest 10 per cent. of his revenues in "presents" so as to bring in business. The Malay outlook is yet more unsuited than that of the Tamil to big business. He is always borrowing and rarely does he pay back in full. He can only do business or take up a contract on capital he borrows, in the latter case from the man giving out the contract, and he asks for more money before he has enough to show for the previous loan. I doubt whether many centuries' education directed to this end would suffice to eradicate so pronounced a trait!

The Malays are essentially a race of peasant small-holders. Once the population approaches the saturation point as has happened to an allied race in Java (and to Malays themselves to a very much more limited extent in the Trengganu plain

round Kuala Trengganu), they develop qualities of industry which are frequently denied them by admirers of other races. I can also imagine an upper stratum of leisured gentlemen with probably more innate refinement of manner than most European aristocracies possess. But as for a great civilization, no! Cottage industries, yes; but factories—again, no. Even as compared with the Tamil the Malay shows less aptitude for industrial team-work as an employee. Anyone who has employed both Malay and Tamil gardeners will bear me out in my contention that the more Tamils you employ at a time the better they work; the fact of being a team, all doing identical work, encourages them, and the total output of work goes up in more than arithmetical proportion with increases in numbers; while on the other hand Malays work better singly. If two Malay gardeners are kept they will watch each other to make sure that they do not get through more work than the other man. One gardener may actually keep the same garden in better order than two. He will take pride in something which is his sole responsibility. These characteristics are mirrored in their method of living. Tamils and Telugus live together in compact villages: Malays live each in their own orchard.

To qualify this somewhat extremist picture I have to admit that team-work is frequent in the fishing industry on the east coast, and is almost universal for limited periods in the rice-planting industry in those parts of the country in which cultivation is dependent on irrigation. This, however, is an instance of the co-operation of equal proprietors for a common end, in no way comparable to the work done for an employer in a factory. In the same way the peasant proprietor when left ungoverned rejoices in useful sports which can only be prosecuted successfully by men joining in teams with the prospect of a good feast at the end of the day's work: driving sambhur into a string of rattan loops set in the jungle, these hunts forming the occasion for the planning of other hunts of even more destructive enemies of their padi, the pig hunts, as exciting, planned often as big drives into corrals, in which pig are killed with spears, but unfortunately not ending in the same sort of feast, and those other hunts, also ending

in feasts, of fish, by barring a stream with a barrier of stakes and spearing and netting the half-stupefied fish, driven down by pouring an infusion of *tuba* root into the stream a few miles further up. But these again are the sports not of serfs but of independent landowners, enjoying Nature and wild animals like the English gentry.

That is the rôle of the Malay in this world, an independent peasant proprietor, filling in lulls in his farming activities with village industries, with no wish to govern himself, extraordinarily appreciative of good government even by an alien race, taking life not too seriously, a hero in bigger disasters, a child in his pleasures, enjoying above all things the sports of the chase and competitions of one *kampong* against another in kite-flying, top-throwing and such-like, pastimes ending in feasts at which the women have their opportunity for vying with each other in cookery, feasts at which spectacular posturing wrestling raises the excitement of participators and onlookers alike, and old scores are paid off by the wrestlers in a moderately harmless manner.

Such is the real Malay whom we often fail to recognise on the west coast, with its swirl of western civilization, noticing alas more than anything else his failure to assimilate himself mentally to the type which alone can "bear the burden" of this civilization. The tendency for him to aim at getting rich quickly by treating land as a marketable commodity (a tendency which has been stimulated excessively by the plantation industries, especially by the rubber boom) was very early seen to contain elements of extreme danger. This tendency, and the dangers associated with it are by no means peculiar to the Malay Peninsula. All over the world it has been, and is being, found necessary to protect peasant proprietors against themselves. The truth of the matter is that the evolution of legal rights to suit gentry and burghers has always been inimical to the class of peasant proprietors. In primitive law the world over, rights approximating to freehold property do not exist. I think I am right in making the broad generalization that when rights in land arise in the course of the transition from nomadic to agricultural life

those rights are only occupational, and that no power of alienation is associated with them. It is important that it should be recognized that these primitive legal conditions are immeasurably healthier for a population of peasant proprietors than the more advanced system of law developed later by the middle and upper classes.

In British Malaya limitations on the rights of encumbering and alienating land have been enacted in the Malacca Lands Transfer Ordinance of 1901, and the Nĕgri Sĕmbilan Customary Lands Enactment of 1909,[1] both of which give legal force to the *adat pĕrpateh*, and in the Federated Malay States generally in the Malay Reservations Enactment of 1916, which prohibits sale or encumbering of land to other races in areas gazetted as Malay reservations.

In view of the recognition in Malaya itself and all over the world that peasant proprietorship and unlimited rights of disposal of land are incompatible, it is idle to maintain that radical changes in the custom in the classing of new plantations as *pĕrniaga'an*, commodities, ownable and sellable without restriction, are unhealthy. I am inclined to think that combined with the Malay Reservation Enactment this freedom can do no harm in view of other provisions of the *adat*, that the power to sell land is limited by the necessity of a *divorcée* even being provided with a home (*a tĕmpat tinggal*), which in default of an orchard and a padi field may be a rubber estate, and that rubber estates themselves eventually become ancestral property.

The existence of this category of *ancestral property*, with the prohibition of sale except for specified purposes subject always to *the right of pre-emption*, firstly on the part of the members of the same *pĕrut* and then on the part of members of the same *suku*, is a valuable provision of the *adat*. The Malay Reservations Enactment protects the Malay against other races, which may appear sufficient to Europeans whose only experience has been on the west coast, but my experience here in Trengganu leads me to think that the Malay will almost certainly at some time on the west coast also need protection

[1] Re-enacted with extensive amendments in 1926.

against money-lenders and rich men of his own race. The virtual entailing of property within the family is most certainly a valuable provision.

I can foresee only one direction in which greater adaptation to modern conditions is at all likely to be necessary: in connection with co-operative societies. We should distinguish between two types of co-operative society, those for the purpose of loans and those for the purpose of selling agricultural products. The latter does not lead to the charging of land, so the restrictive provision of the *adat* would be no obstacle. There is no cultivation of ancestral orchards in between crops, so that the need to use them as a security should not arise except in connection with objects permitted by the *adat* or for heavy expenditure for marriages, which should in any case be discouraged. I can imagine under more developed economic conditions, such as exist at present in India, of loans being raised on rice-lands to meet expenditure on the cultivation of rice-fields to be repaid at harvest, and of loans raised on the security of the harvested and warehoused padi. The first of these purposes would require an extension of the provisions of the *adat*. But I can see no difficulty therein *provided all co-operative societies in matriarchal localities were each restricted preferably to one* prut, *certainly to one* suku. I do not know whether members of the Co-operative Department have ever thought of making such restrictions or of the advantages inherent in such restricted societies. Not only is the essential *function of clans* and in exogamic society *economic co-operation beyond the limits of the family*, but that most valuable thing, the corporate feeling, the feeling of being a member of a definite unit with interests in common with the other members of the unit, which needs careful cultivation in order to make co-operative societies a success, is already in existence. I have at times wondered whether the comparative absence of a "money sense" among Malays might not make the effective development of co-operative societies among them impossible. Financial honour is however present in matriarchal districts within the *pĕrut* and within the *suku*. There is the traditional ideal moreover of sharing debts and profit in common: "*chichir*

sama rugi, dapat sama bĕrlaba" (what is frittered away is a loss to all, gains we share together). All these considerations would apply even more decisively to the second type of society, that for a purely economic object such as the marketing of agricultural produce.

I conclude therefrom not only that the *adat* is not particularly unsuited to modern conditions, but that, in view of the fact that the population consists of agricultural smallholders, it is in essentials more suited than the other forms of custom found in the peninsula.

I have already implicitly admitted that unchangeability of the *adat* is not what is to be desired. In this very question of co-operation I have foreshadowed development along the lines already laid down by the *adat*. The question remains, "is the *adat* easily capable of change and evolution or is it a semi-fossilized institution ?"

I maintain that it is sufficiently alive and elastic to adapt itself further, and that this is proved by its recent history, which I shall pass rapidly in review.

One most important change has been the relaxation of tribal control over acquired property. We have already seen that in Mĕnangkabau this relaxation extended only to the gift of property by a father to his children in the presence of his own *waris*. I drew your attention to the fact that this relaxation is more fundamental than appears on the surface, for it introduces an entirely new principle, the possibility of property passing by gift from one tribe to another. (Though acquired property is in a measure individual, and far less communal in nature than ancestral property, the tribe yet had at that stage a very considerable lien over it.)

In the Malay Peninsula the relaxation went much further. Ancestral property itself became more individual than formerly and the tribal restrictions on the alienation of acquired property became very small. Partial restrictions remain when property is in process of becoming ancestral. I think it can be said that no restrictions whatever attach to acquired property during the lifetime of the acquirer (with the obvious exception of ancestral land purchased with acquired money by a member

of the same tribe, and the exception as in Jelĕbu of a man, on the death of his wife, holding the propety in trust for his children).

The rubber boom brought about a further development of the custom. Rubber land receded as it were from the category " land " and took its place in the category " goods." Hitherto ownership even of acquired land had been impossible for a man, on divorce, even if the house standing on jointly acquired land could be reckoned as joint property, half of the price of which the wife would have to pay, she took the whole of the land. The custom has now developed so that jointly acquired rubber land is joint property and is halved on divorce. Moreover, on the death of the owner there is a very strong tendency for rubber land not to become ancestral. Sons can therefore inherit it as well as daughters. (My personal opinion is that this principle is limited by the operation of the other principle that each daughter must have a " *tĕmpat tinggal* ", a place to live in, and that if there is not enough *kampong* land to go round the rubber land must be drawn upon, and that it is only when the needs of the daughters have been satisfied that division of the rubber land among the sons (or among sons and daughters) can take place.)

The above is sufficient proof of the rapid adaptability of the custom to new economic conditions. It is clear that with tactful handling, and avoidance of the tendency to crystallize the *adat* in unalterable shape, or if it should be codified, by legislative amendments as the need became felt, it should be able to adapt itself to any new conditions which might supervene.

Hitherto we have considered aspects of the custom which might conceivably characterize an old patriarchal, quite as well as a matriarchal custom. Let us turn now to its specifically matriarchal aspects.

§ 2. KEEPING WOMEN ON THE LAND

The most obvious tendency of the *adat* is to keep women on the land. The men may roam about the world seeking for riches, but they come back eventually to the women, who are logically tied to the land they have to look after.

This tie to the land is not bondage. It does not preclude a woman from going on a pilgrimage to Mecca for instance.

It can scarcely be denied that this tendency to tie the women to the land is eminently sound. Under any normal conditions of civilization a woman is as it were shackled by children. These provisions complement the picture. The woman is the centre of the home, the home is firmly fixed on the woman's own land, in her own home-country. These are ideal conditions for the growth and development of a civilization based on a strong body of tradition, on the development in a race of a " group mind ".

§ 3. THE INSURANCE OF WOMEN AND CHILDREN AGAINST WANT

The greatest and most typical benefit of this matriarchal system is the insurance of women (and children) against want in a manner difficult to achieve, and in fact to the best of my knowledge never yet achieved, either under a patriarchal or a parental system.

It would appear to me, if one takes a wide view of society, that one must admit the truth of the following propositions: that the normal condition of man and woman is that of marriage and of having a family, that a division of labour takes place by which man concentrates on providing the necessities and luxuries of life while woman concentrates to a greater or lesser extent on the home and the children. That is obviously the state of affairs under any pioneering conditions. The reason why Canada calls out for more women is not because (or not primarily because) it wants an increase in the progenitive capacity of the population, but because it is economically necessary for the efficiency of the excess of men already in the country that there be more of the natural division of labour between the sexes, and thus a more stable civilization. Passing to older countries, however great the value one may attach to the growth of the new class of married professional women in countries where sufficient women of lower classes are available to do those portions of the work naturally falling to women, one must realize that it would only need the servant problem

to become a little more acute, and the birth-rate in this class to rise to a higher and more desirable level, for duties connected with the home to preclude a profession. Amongst a race of peasant proprietors at least it is evident that no such independent livelihood is possible for women. A *divorcée* or a widow must therefore, unless the laws of property protect her, find it far harder to earn her own living than a man in a similar position. Insecurity of livelihood of the men is of comparatively little moment. One could argue that in all but rich households the patriarchal idea of fathers having a prior right to children was unworkable (even if one disputed the theorem that it is far better for the children to be brought up by the mother), and that therefore on divorce the mother would have the greater burden and far the greater need for security of livelihood.

The *adat pĕrpateh* provides all the security required. It provides that the children are property of the mother and that whichever party was to blame the wife, even if she bring no ancestral property to marriage, secures a "*tĕmpat tinggal*", a house, with an orchard and a padi field, before one proceeds to the partition of the balance of the property acquired during marriage.

§ 4. DISCOUNTENANCING OF DIVORCE

In its original form it would appear that divorce was much rarer than it now is, that it was discountenanced by the custom, and that so far as it was allowed by the custom it was as easy for a woman to obtain divorce as for a man. Even at the present day a man married to a rich woman stands to lose very much on divorcing her: and this must act as an additional deterrent factor. But a change has undoubtedly taken place. Divorce has become much more frequent. The change has been due entirely to the infiltration of Islamic ideas and is in every way unfortunate. No less unpleasant a word than scandalous can be used to describe conditions as I see them where I am now stationed in a Malay state professing no *adat*, but pure Mohammedan law, of the marriages of boys as they leave school to girls yet younger, with the divorce of the girl

in innumerable cases following a few months later. The family is the foundation of all civilization and no civilization worthy of the name can develop under conditions so impermanent. This is another of the many instances where the path of progress turns backward.

§ 5. MONOGAMOUS MARRIAGE

The question of the permanency of marriage is closely allied to that of its restriction to the mating of one man with one woman. Monogamous marriage permits of very much higher racial evolution than either of the logical deviations from it, polygamy or polyandry.

Malinowski, whom I may, for the benefit of laymen, describe as one of the foremost anthropologists of the world, in analysing the functions of marriage defines them thus: (1) the maintenance of racial quality, and (2) the maintenance of the continuity of culture.

The *maintenance of racial quality* referred to is the maintenance of the physical and mental qualities of a race (or their improvement) by breeding; and this breeding under conditions of freedom of choice of individuals of each sex for each other is the operation of sexual selection. According to Malinowski, "sociological considerations prove that the individual family based on monogamous marriage provides the best opportunities for effective sexual selection".

This sexual selection, as I have said, is dependent on comparative freedom of choice. This is actually a matter in which Nĕgri Sĕmbilan monogamous marriage could be improved. Under pure matriarchal conditions it would appear that women were allowed a fair element of choice. Present conditions in Nĕgri Sĕmbilan have approached far too closely to those characteristic of the *adat tĕmenggong* under which boys and girls are married while still absolutely strangers to each other. It is this fact of being strangers to each other which is the most potent cause of the subsequent divorces. The reason why these boys and girls are kept apart from each other is the fear of illicit intercourse. This danger can only be reduced by a system of education which gives both sexes,

but particularly the female, a sense of responsibility. Such a system of education would be much easier to make a success of in matriarchal countries than elsewhere. From the point of view of sexual selection therefore Nĕgri Sĕmbilan and Malacca have the advantage in the already existing monogamous marriage, and they would find it easier to introduce a sound system of education for women than other parts of the peninsula ; but till they have developed the freedom of choice which depends on the success of this system of education they cannot, in this particular respect, reap all the benefit from a monogamous marriage custom which Malinowski takes to have been proved.

Maintenance of the continuity of culture includes development of that culture. The researches of a number of men (Lowie, Kroeber, E. C. Parsons) have proved that under the conditions of monogamous marriage children obtain the best training and the best orientation of their outlook and sentiments making for the continuity of culture. For the rôle of family life in this matter is supreme. It has been independently established by anthropologists and by psycho-analysts that it is the family which supplies the pattern for the community life of later years. The family is in fact the medium in which are fused together the instinctive endowment which each of us inherits through the germ cells of our parents and the social heritage, the social " atmosphere ", the general body of beliefs and known facts, of our time and race, the very basis of our culture, which we absorb in our early years through the atmosphere of the home. It is in the family that the bonds between parents and children, which to start with are primarily physical, develop into the social bonds which unite us to our fellow, beings generally. It is through wholesome family life, moreover, that various dangers connected with our sexual instincts can be eliminated. The most wholesome atmosphere for all these processes is that to be found in a monogamous home.[1]

As I have argued earlier, the centre of the home is the mother. For there to be intimate union between herself and her husband or for her to be able to exert a strong cultural effect on her

[1] The above argument is merely a paraphrase of Malinowski's argument in his article " Anthropology " in Vol. XXIX of the *Enc. Brit.*

children she must be sufficiently well educated and independent. At the present day the union between husband and wife is too imperfect for the husband even to be able to pass on, and thus to make use of, the more valuable elements of western culture which he stumbles across. For instance their baby a few weeks old may be dying of digestive trouble largely owing to being fed on rice. He may be told that continued feeding with rice will kill the child, he may believe this and he may exert all the influence he possesses over his wife to get her to change the diet. It is almost always in vain that he makes the effort. Women are in most spheres the slaves of men : here is the one sphere in which sexual antagonism makes itself really felt. Convention asserts that mere man knows nothing about babies. In this sphere woman rules. The female relations of both husband and wife support her against him. It is the same with all cultural influences on children. The women act as a tremendous resistence to the electrical current of new cultural ideas. Sexual antagonism due to the subordinate position of woman in all other spheres stiffens her resistence in this sphere, and her husband has not sufficiently won her confidence for her to be willing to believe that he may be right. This " electrical resistance " can only be overcome by two simultaneous developments, the education of women up to a standard at which they can appreciate the value of new ideas coming to them through yet more highly educated men, and an equalizing of the social position of the sexes sufficient for them to share more of life in common and thus develop mutual confidence.

There is yet another reason why woman should not be in a position of appearing subordinate in the home. A subordinate position of women to men must make it very difficult for women to exercise the requisite influence on growing children.

We can safely lay down the general proposition that a high social position for women is imperative for a really healthy development of culture, and that this position can only be obtained under monogamy. In this connection I invite my readers to ponder over this statement of McDougall's, one of the foremost psychologists of the day : " The *raison d'être* of marriage is the protection of women and children. Mono-

gamous marriage is the best device that the wit of man (or of woman) has conceived for this purpose; for not only does it protect women against men and against themselves, but it also secures them a much higher level in social life than any other system hitherto tried or imagined." [1]

It will probably come as a shock to most of my Malay readers to hear that these views are thoroughly endorsed by the foremost Mohammedan thinkers (not only in Turkey and Albania). This matter being of such importance I shall quote at some length from the late Sir Syed Ameer Ali's *Mahomedan Law*:

"Belonging myself to the little known, though not unimportant, philosophical and legal school of the M'utazals, and thus occypying a vantage ground of observation as regards the general progress of ideas among other sections of Mahomedans in India, I cannot but observe the movement which has been going on for some time among them. The advancement of culture, and the development and growth of new ideas, have begun to exercise the same influence on them as on other races and peoples. . . . The progress of thought is chiefly evidenced by the views which the great majority of Moslems now entertain respecting the institutions of polygamy, slavery, and the facility of divorce without the sanction of the Kâzi. Whatever may have been the necessity for polygamy in the earliest stages of society, in modern times it can only be regarded as an unmitigated and unendurable evil. Owing to the growth of these views and a better appreciation of the spirit of the Koran, the Moslems of India generally look upon polygamy as opposed to the Islamic precepts." [2]

"Both among the Arabs and the Jews who inhabited the peninsula of Arabia the condition of women was extremely degraded." [3] "Among the pagan Arabs a woman was considered a mere chattel." [4] "Among the ancient Arabs and Jews there existed, besides the system of plurality of wives, the custom of entering into conditional, as well as temporary, contracts of marriage. These loose notions of morality exercised the most disastrous influence on the constitution of

[1] *Character and the Conduct of Life*, p. 205.
[2] Preface to 1st edition, p. xiii.
[3] *Mahomedan Law*, Introduction, p. 19.
[4] *Ibid.*, p. 20.

society within the Peninsula. Beyond the boundaries of Arabia the condition of morals was no less lax. In the Persian and the Byzantine empires, women occupied the most degraded position in the social scale. Fanatical enthusiasts, whom Christendom in later times canonized as saints, preached against them and denounced their enormities, forgetting that the evils they perceived in women were the reflections of their own jaundiced minds. It was at this time, when the social fabric was falling to pieces on all sides, when all that had hitherto kept it together was giving way, when the cry had gone forth that all the older systems had been weighed in the scale of experience and found wanting, that Mahomed introduced his reforms."[1] "He restrained polygamy by limiting the maximum number of contemporaneous marriages and *by making absolute equality towards all, obligatory on the man*. . . . The extreme importance of this proviso, bearing especially in mind the meaning which is attached to the word 'equity' (*'adl*) in the Koranic teachings, has not been lost sight of by the great thinkers of the Moslem world. . . . The conviction is gradually forcing itself on all sides, in all advanced Moslem communities, that polygamy is as much opposed to the Islamic laws as it is to the general progress of civilized society and true culture. In consequence of this conviction a large and growing section of Islamists regard the practice of polygamy as positively unlawful."[2]

At the moment when such views are being widely disseminated by the leaders of Islamic thought and are actually being made statute law in certain countries such as Turkey and Albania, it is nothing less than tragic to have sexual laxity being introduced in a new form, into a country free from it in that form, in the name of Islam.

§ 6. THE VIRILITY OF MEN FOLLOWING MATRIARCHAL CUSTOM

I do not know whether it is universal that the men of races following matriarchal custom are a particularly fine body; but this I do know, that the men of the matriarchal races

[1] *Mahomedan Law*, p. 23. [2] *Ibid.*, p. 24.

with which I am familiar, the Malays of Nĕgri Sĕmbilan and the Nayars of Malabar, do stand out from their neighbours.

Both the men and women of Rembau struck me when I went to live among them as being rather a fine independent crowd, more given to acts of violence, it is true, more than usually litigious (the typical Malay of the peninsula is remarkably free from these two faults), but free from the slight tendency to cringe towards rajas which one meets among Malay peasants living near a Malay Court, in fact very much the other way, adopting somewhat of a truculent attitude towards them. With all this he is easy to rule so long as the rule is firm. As an instance of this I may relate an incident from my life in Rembau in 1920. The then Ruler of Rembau (Haji Sulong, from whom I recorded a statement in 1926) was a weak, ineffective man, and very unpopular among the chiefs. One of these, a fine old man, Datoh Gempa Maharaja Zakaria (from whom I have recorded several statements), discussing with me the effectiveness of British rule, the almost miraculous peace in spite of no show of force, said that, if it had not been for the British, Haji Sulong would long ago have been murdered: he himself would have murdered him. British rule was at that time represented in Rembau merely by one Assistant District Officer (myself), and a small posse of about twenty Malay police in the command of a Malay sergeant!

At that time I merely put down the women's good qualities to matriarchal custom, the men's to the democratic constitution of these states.

I hope Mr. Hubback, the great big-game hunter, will pardon me for passing on at second hand his opinion that the Nĕgri Sĕmbilan Malays are the finest in the peninsula, that their qualities show up particularly well in jungle work, and that they are directly due to matriarchy.

From my quotations from Thurston it will already have been seen that the Nayars are generally considered to be the finest of the races in Malabar, and the Bants of Canara.

Why matriarchal custom should work in this manner is somewhat mysterious.

My suggestion is that it breeds a spirit of adventure. Much

as our English virility has developed by the custom of primogeniture forcing younger sons into other walks of life and into distant countries to make good on their own, so the possession of land by the women drives a large proportion of the young men of Nĕgri Sĕmbilan to seek a fortune outside the country. They return to it later with an assured economic position much as our Anglo-Indian merchants used to in the days of the pagoda tree.

CHAPTER II

THE OPPONENTS OF THE ADAT

THERE are two main currents of opposition to the *adat*, that deriving from the men who have too little of this world's goods, and that deriving from the enthusiasts about religion. In addition there is that originating from among the small body of men who wish to enjoy polygamy, and who for that reason oppose the monogamous custom. I have already said sufficient on the subject of polygamy.

Those who object to the extent to which the rules of inheritance favour women belong to two different classes: the few rich men who want to leave land they have acquired to their own children, particularly to their sons, and a large body of young men who object to they themselves not getting enough of this world's goods, men who have become infected with the idea at the bottom of most social unrest: "Why should not we have as much of the good things of life as anyone else?"

The former class are to my mind labouring under a misapprehension. They are thinking of the old *adat* under which no land could be inherited by a man. I hope I have sufficiently convinced my readers that the *adat* has developed and that under the developed *adat* of the Malay Peninsula there is no obstacle to the inheritance of acquired plantations.

The same argument will apply to the second class, as what they are principally troubled about is the inheritance of rubber estates forming part of the joint acquisitions of their parents. The idea that males could not under the custom inherit land has been encouraged officially by the wording of the Customary Lands Enactment, confusing the ideas of "ancestral" and "customary." Once this younger generation have won their point that they are eligible to inherit rubber plantations planted upon acquired lands held under the custom, I can only hope they

will go slow in pressing other demands, and that their more enlightened brothers will show them the very great advantages, from the point of view of the race as a whole, of the system under which they live, not forgetting that in an age of rapid social development, in which women lag seriously behind the men in education, there is an almost irresistible tendency for the men to take an unfair advantage over the women.

An example of this is to be seen among the Bataks, a patriarchal community in Sumatra. Originally there was no divorce among them. Under the influence of Islam divorce has been introduced, *but only at the instance of the husband.* Even before this development the position of women was as low as it was possible to imagine it.[1]

Another point to remember about this agitation is that it is only among men; why should women not be consulted in the matter as much as men?

The second class of opponent, the religious reformer, is on firmer ground, particularly if he is an out-and-out puritanical reformer, a Wahabi. Basing all law, religion and ritual on the Koran and the traditions of the immediate companions of Mohammed, there is clearly no room for *adat*, particularly if it conflicts in any way with texts of the Koran. (The Koran does contain references to inheritance: systems of inheritance other than the orthodox can therefore be said to be opposed to the Koran.)

As against this view it can be urged that the vast majority of Moslems belong to less extreme sects in which *adat* has played a very great rôle. Though it is still theoretically maintained that antagonism with texts disqualifies *adat*, heterodox customs concerning inheritance have been common all over the East, in particular in India and Sumatra, for instance among the matriarchal Moplahs of Malabar, and the patriarchal Bataks of northern Sumatra. The reformer might wish to clear away all these heterodox customs of inheritance. If he takes up this attitude he should logically set himself to purge the legal system of *all types* of customary law opposed to texts of the Koran. The Wahabis and the Ibadites have set out to do this, but other sects of Mohammedanism accept

[1] *Mal Soc.*, p. 32.

the fact that it is an impossible ideal, which will only be realized at the millenium, if ever. If the latter view, of the impracticability of the ideal, is taken with regard to law generally, there is no reason why the law of inheritance should be singled out for specially strict treatment. Moreover, the general Islamic system allows for statute law overruling the " *hukum shara'* " or canon law, and this is what has happened in the particular field of the law of inheritance with the " Customary Land Enactment " of Něgri Sěmbilan and the " Malacca Lands Transfer Ordinance ".

I shall develop these points in a few quotations. As to the force of custom:

" Those customs and usages of the people of Arabia, which were not expressly repealed during the lifetime of the prophet, are held to have been sanctioned by the Lawgiver by his silence. Customs generally as a source of laws are spoken of as having the force of *Ijmá'* (consensus of juristic opinion) and their validity is based on the texts as the validity of the latter. It is laid down in ' Hedáya ' that custom holds the same rank as *Ijmá'* in the absence of an express text, and in another place in the same book, custom is spoken of as being the arbiter of analogy.

" Custom does not command any spiritual authority like *Ijmá'* of the learned, but a transaction sanctioned by custom is legally operative even if it be in violation of a rule of law derived from analogy; it must not, however, be opposed to a clear text of the Qur'án or of an authentic tradition. There is agreement of opinion among the Sunnis, that custom overrides analogical law, and a student of Muhammadan law cannot help noticing that custom played no small part in its growth, especially during the time of the Companions and their successors. The Hanafi writers on jurisprudence include custom as a source of law, under the principle of *istihsan* or juristic preference." [1]

As to the force even of an evolving custom:

" It may be that even a custom which has sprung up within living memory, will be enforced if it be found to be generally

[1] Abdur Rahim, *Mahomedan Jurisprudence*, p. 136.

prevalent among the Muhammadans of the country in which the question of its validity has arisen. The author of Raddu'-l-Muhtar defines *ta'ámul* or custom as what is more often practised than not. . . . It is of the very essence of custom that it should be territorial, so that custom of one country cannot affect the general laws of other countries. Further it has authority only so long as it prevails, so that the custom of one age has no force on another age." [1]

As to the development of an opposition between canon law and secular law:

" All these schools of law administer a scheme of duties which for centuries has had only a partial connection with the real legal system of the Moslem peoples. Among the Wáhhabis and Ibadites alone is it the the whole of the law. Elsewhere, since the Omayyad period, its courts have been in great part pushed aside by others, and its scheme has come to be regarded as an expression of impossible theory, to be realized at best with the coming of the millennium. The causes and methods of this change now call for detailed notice.

" As Islam spread beyond the desert and the conditions in which the life of Mahomet and his companions had been cast, it came to regions, climates, customs, where the Arabian usages no longer held. Not only were the prescripts of Medina ill adapted to the new conditions; the new people had legal usages of their own to which they clung and which nothing could make them abandon. It was rather the Moslem leaders who were compelled to abandon their ideas and for the sake of the spread of Islam to accept and incorporate much that was diametrically opposed to the original legislation either of the Koran or of Mahomet's recorded decisions. As in religion the faiths of the conquered peoples were thinly veneered with Moslem phrases, so in law there grew up a customary code (*'ādāt*) for each country, differing from every other, which often completely obscured and annulled the prescriptions of the canon law. The one was an ideal system, studied and praised by the pious learned; the other was the actual working of law in the courts.

[1] Abdur Rahim, *Mahomedan Jurisprudence*, p. 137.

"But besides the obstinate adherence of various peoples to their old paths, the will of individual rulers was a determining factor. When these ceased to be saints and students of divine things, and came to be worldly statesmen and opportunists, followers of their own objects and pleasures, no system could hold which set a limit on their authority. The oriental ruler must rule and judge on his own initiative, and the schools of canon law tended to reduce everything to an academic fixedness. There thus arose a new and specific statute law, emanating from the sovereign. At first he judged in the gate as seemed good in his eyes and as was his right and duty ; later, his will was codified as in the Turkish statute law (*qawānīn*) derived from various European codes. Thus there has grown up in almost every Moslem country at least two systems of courts, the one administering this canon law . . . the other, the true law courts of the land, administering codes based on local custom and the decrees of the local rulers. The hope for the future in Islam, there can be little doubt, lies in the principle of the agreement of the Moslem peoples, with its conception of catholic unity, and its ability, through that unity, to make and abrogate laws. As the Moslem peoples advance, their law can, thus, advance with them, and the grasp of the dead hand of the canon law be gradually and legally released." [1]

Even in backward and fanatical Trengganu, where I now write, the principle is admitted that where it is desirable, for instance for the purpose of opening up a new country, that is for economic reasons, new statute law may be enacted abrogating provisions of the *hukum shara'* (*Supaya di-buka nĕgri buleh-lah di-buat undang-undang yang mĕnyalahi hukum*).

On the strength of these opinions of the learned I would put in a plea for according to a living, evolving custom, containing so many good points, and so well suited to the population which lives under it, a full measure of honour and respect, and for allowing it to continue to evolve in harmony with the deeper economic and social needs of the people who follow it.

[1] Macdonald in the article "Mahomedan Law" in the *Enc. Brit.*, Vol. XVII, pp. 416, 417.

EPILOGUE

WHILE putting the finishing touches to this book it happened that I fell to discussing with Che Omar the desirability or otherwise of maintaining the custom, the same Che Omar who stated that on divorcing a rich woman under matriarchal custom a man relapsed into comparatively extreme poverty. He has a Trengganu wife here as well as a Nĕgri Sĕmbilan wife in his home *kampong*, and I quite expected that the joys of being a patriarch would have encouraged him to look with disfavour on the old *adat*. It was with some surprise that I heard him say: "Compare the women, look how poor they are here and how rich in Nĕgri Sĕmbilan", taking it for granted, as not a matter for argument, that the rich condition of women ensured healthy conditions for the growth of a family, and that for that reason the *adat* should be maintained.

I felt I was giving expression to confused ideas at the back of his mind when I formulated the following theorems.

Men exert an effect only on the immediate future. Women through their children affect the distant future. Should we by analogy with those well-beloved of economic theorists, who discount present in favour of future gains and pleasures, discount progress in the immediate future as against progress in the distant future, we would concentrate our attention on women and girls rather than on boys and men.

Both these forms of discounting could be pushed to illogical extremes. The fair-haired boy of economics would forget how to amuse himself in concentrating on pleasures out of his immediate reach: the visionary would allow material civilization to crash in developing a race fit for a great civilization. On the other hand the absence of discounting, the short view, whether in a life of pleasure or in organizing for the future, leads nowhere. The surest balance of values lies in a slight emphasis of the future over the present. That emphasis

implies that the future of the race is in the lap of women and girls rather than in the strong hand of men. If one or the other had to be favoured as regards general culture and economic stability it would be well that it should be the female sex.

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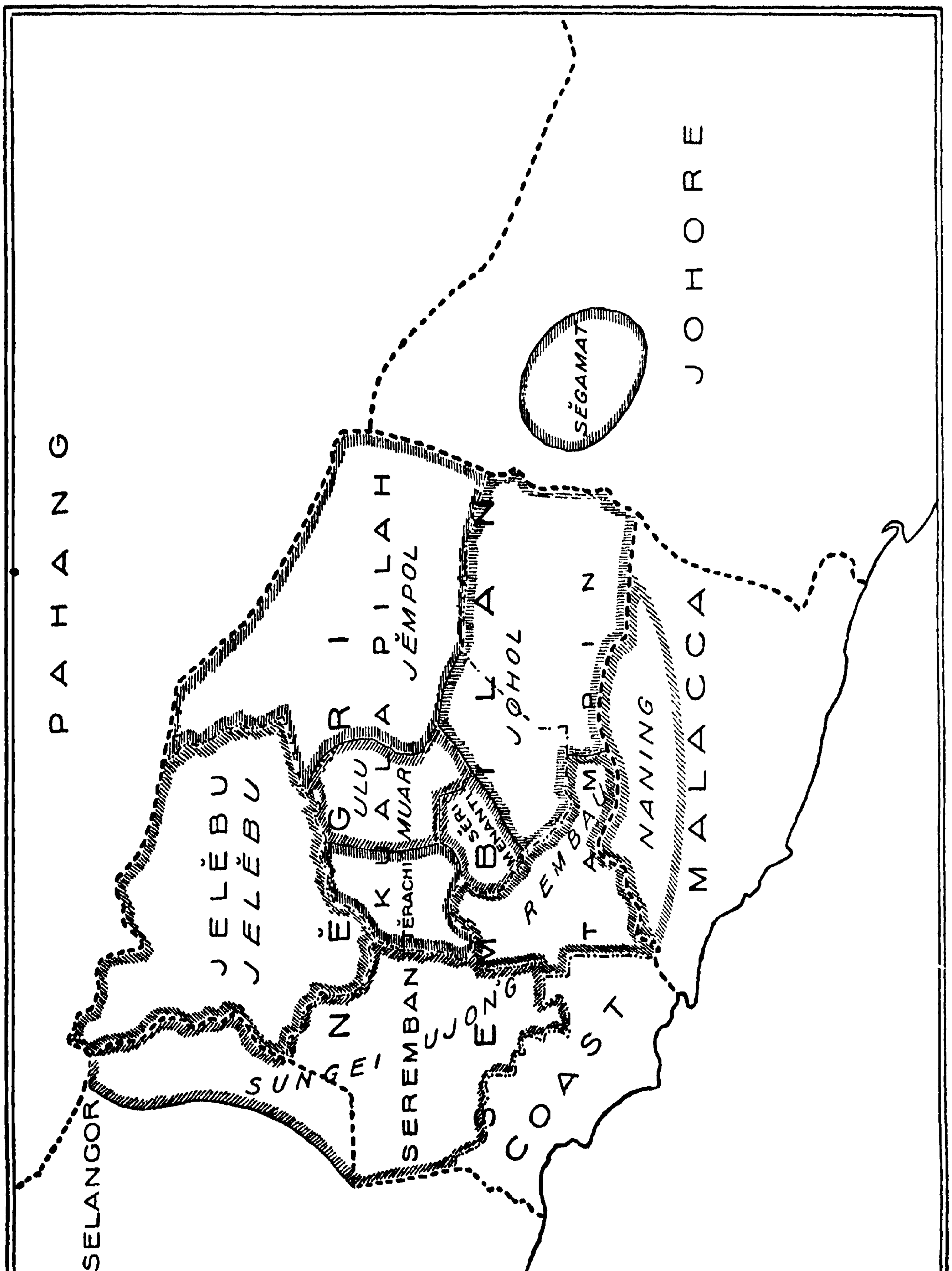
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[By kind permission of the Straits Branch of the Royal Asiatic Society.



THE PRESENT DISTRIBUTION OF MATRIARCHY IN THE MALAY PENINSULA

APPENDIX I

AN AGREEMENT MODIFYING THE CUSTOM IS NOT VALID

Rembau Land Case 10/1913 *upheld on appeal.*

The British Resident writes:

" I am of opinion that Hassan would have no power to agree that the rule above quoted should not apply to this land and that it makes no difference that this land was not entered in the register as customary."

" Decision:

" I am of opinion that the land should be divided, Romit being entered as holder of one half and Hassan of the other half. I doubt whether the agreement even if made and assented to by Hassan was valid to oust the operation of the *adat* which seems perfectly clear."

The *adat* enforced was " *Mati laki tinggal ka bini, mati bini tinggal ka laki.*"

APPENDIX II

INHERITANCE OF THE SHARE OF PROPERTY THE HUSBAND OBTAINS AT DIVORCE

Rembau Land Case 39/1913, *the collector's decision upheld on appeal.*

The property goes to the *waris jantan*, i.e. to the sisters in equal shares (the children of a deceased sister dividing between themselves the share due to their mother).

Lima states: [1] " A man can *tĕntu-kan* his share to his children without any ceremony being necessary, and in the ordinary course of affairs this is done."

In the course of his evidence in case 39/13 Datoh Gempa Maharaja states that the property should go to the children, without mentioning *tĕntu-kan*.

APPENDIX III

INHERITANCE OF ANCESTRAL PROPERTY BY DISTANT RELATIONS

In the absence of nearer heirs second and third cousins (*sanak ibu* and *sanak datoh*) can inherit, third and fourth cousins (*sanak moyang* and *sanak nenek*) cannot.

In the latter case the land can be sold, expenses being paid out of it and the *lĕmbagas* deciding on the disposal of the balance.

[1] This statement by Lima, bearing on this case, was made to me in 1920.

APPENDIX IV

INHERITANCE OF JOINT CONJUGAL ACQUISITIONS

A statement, the name of deponent not recorded. Date, 1920.

On the death of the husband the property goes to the wife.[1] There is no special name for it while in her hands. If she then marries again, from his point of view it is called *dapatan,* from hers, *charian kawan e marin* (acquisitions of her former husband). When she dies it becomes the ancestral property of her children.

If the wife dies first the property goes to the husband (*mati bini tinggal ka laki*). It is called *charian bini e marin* (acquisitions of his former wife). He is *jĕput* (invited back) by his *waris,* and he can *tĕntukan* even the whole to the children. Should he marry again this property is then called the *dapatan* of his new wife and the *pĕmbawa* of the man. On his death the property goes to his children (presumably only if it has been *tĕntukan* to them). While in their hands it is called *herta di-bawa.* It is not yet ancestral: it only becomes ancestral on inheritance by the grandchildren of the original couple.

APPENDIX V

DIVISION ON DIVORCE

A statement by Maabot, checked by Datoh Sĕri Maharaja Amat and Datoh Gempa Maharaja Zakaria in 1920.

The saying is "*chari bagi, pĕndapat tinggal, pĕmbawa kĕmbali*". In any inquiry into division of *charian* (acquired property) *pĕndapat* and *pĕmbawa* must be considered. Any of these which has disappeared must be made good by the other partner in cash.

The division of *charian* must be in equal halves. Children are not taken into account; though the father may of his own free will give it to the children.

On the death of the woman her share goes to the children.

On the death of the man if the property has not been *tĕntukan* by him his share goes to his *waris.* If it has been *tĕntukan* to his children it goes to them.

APPENDIX VI

THE INHERITANCE BY CHILDREN OF *charian laki bini* IN THE CASE IN WHICH THE WIFE DIES FIRST

Statement by Datoh Sĕri Maharaja Amat and Datoh Gempa Maharaja Zakaria in 1920.

Mati bini pulang ka laki. (On the death of the wife it goes back to the husband.) On the 100th day the relations of the husband

[1] *Mati laki tinggal ka bini.*

can pay him a ceremonial visit and take him back to their fold. This is the ceremony of *jĕput.*

Case I: the man is *jĕput.*

The saying is "*Jĕput hantar*" (On invitation send). In this case the man divides his property into two, taking half himself to his relations and leaving half to his children. If he has no children he takes the whole, and his relations have no claim on any of it till his death.

(*a*) If the man marries again: his share of the property becomes *hĕrta pĕmbawa.* On his death the property goes to his relatives (*saudara*). The children retain their share.

Case II: the man is not *jĕput.*

The man retains the whole of his *hĕrta charian*; which goes to his children on his death.

APPENDIX VII

THE INHERITANCE BY THE HUSBAND'S MOTHER OF *charian laki bini* IN THE CASE OF *chĕrai mati*

A statement taken in 1920: the name of the deponent not recorded.

The husband can by a private agreement with his wife settle a small portion of the *charian laki bini* on his mother.

The wife does not appear to have the same power.

It is argued that as the husband develops the property he should have stronger testamentary powers over it.

APPENDIX VIII

Charian laki bini AND FUNERAL EXPENSES

Rembau Land Case 59 of 1919. Collector: de Moubray.

Kassim, widower, renounces his claim in favour of Sonah (relationship not stated) on account of her having paid the funeral expenses.

APPENDIX IX

AN AGREEMENT IS GIVEN EFFECT TO TO GIVE AT DEATH A SHARE OF INHERITED *charian laki bini* TO A THIRD PARTY IN RETURN FOR MONEYS BORROWED

Rembau Land Case 33 of 1919. Collector: de Moubray.

Siti binti Abu dies (*suku* Biduanda) leaving the widower Maasin bin Doraman (*suku* Anak Malaka). Pral (*suku* Biduanda) asks for a half share on the grounds that the deceased used $45 of his money during his lifetime and that Draman and Siti had agreed that he inherit (*ambil kuasa tanah*).

Neither Siti nor the *lĕmbaga* of *suku* Anak Malaka oppose.

The latter cannot throw any light on the custom.

APPENDIX X

MALE CHILDREN OF A WIDOW MAY INHERIT HER *charian laki bini*

Rembau Land Case 82 *of* 1919. *Collector : de Moubray.*

In this case the widow had no female children and no objection was made to her son inheriting.

APPENDIX XI

CONCERNING AN OBJECTION TO THE SALE OF ANCESTRAL LAND TO A MEMBER OF ANOTHER *prut*

Rembau Land Case 32 *of* 1–20. *Collector : de Moubray.*

I wrote : " I am satisfied that the *adat* as described by the *lĕmbaga* is correct ; the custom being that if a member of the same *prut* claims the right of purchase preferentially to a member of another *prut* and offers the same or nearly the same price, the right must be conceded and given effect to."

The land in question is E.M.R. 742 and 743 Chembong, the owner Isah binti Haji Ismael. She belongs to *prut* Ampat Ibu of tribe Sĕri Mĕlenggang.

Ijah binti Ludin, of another *prut,* discussed with her the purchase of this land at about the end of February 1920. On 29.3.20 they signed an agreement by which Isah was bound to complete the transfer by 1.5.20, Isah receiving on the same date $100 earnest money from Ijah.

Two days later Isah heard that Indam, of the same *pĕrut* as herself, wanted to buy it. Isah did not mind whether she sold the land to Ijah or to Indam provided she got her $600.

Order. The order made was to the effect that subject to the payment of $100 within 21 days by Indam to Ijah, Isah should be at liberty to sell the land to Indam for $600 (inclusive).

APPENDIX XII

THE CLAIM TO INHERIT LAND OF AN ADOPTEE AS AGAINST THAT OF A WOMAN WHO HAD BEEN PROMISED THE LAND IN RETURN FOR LOOKING AFTER THE DECEASED TILL HER DEATH

Rembau Land Case 69 *of* 1920. *Collector : de Moubray.*

Iya claims as adopter.

Singah claims that Sembun, the deceased, called her to look after her and the house till her death (*idop sampai mati*) and told her she would inherit the land on her death. She does not claim to have been related to Sembun.

The Datoh Gempa Maharaja Zakariah made the following statements :

(1) I don't know if there was any ceremony when Iya was adopted. But there can be no doubt that she is the adopted daughter of the deceased.

(2) The fact that she went off to open up some rubber land does not invalidate her claim (her *adat* is not *batal*).

(3) A person may according to the custom leave land by will in this way if a formal testament has been made either in writing, or verbally witnessed by the *datohs* at a feast. *Charian* land can be given in this way, not ancestral land.

On Singah admitting that no such a testament was made the land was ordered to be transmitted to Iya binti Madil.

The judgment was questionable in view of the lack of inquiry into the *adat* of adoption.

APPENDIX XIII

THE SALE OF ANCESTRAL LAND TO PAY FOR FUNERAL EXPENSES

Rembau Land Case 49 *of* 1920. *Collector : de Moubray.*

The owner of the land proposes to sell the land to pay for the funeral expenses of her father. An objection has been lodged by a member of her tribe.

The Datoh Perba Salleh says that such a sale is permitted by the custom.

There being no purchaser offering in the same tribe the objection is dismissed.

APPENDIX XIV

A CASE OF *charian laki bini* GOING, ON THE DEATH OF THE HUSBAND, TO HIS YOUNGEST SON, THERE BEING NO OBJECTION ON THE PART OF THE WIDOW OR OTHER CHILDREN

Rembau Land Case 66 *of* 1920. *Collector : de Moubray.*

APPENDIX XV

UNDER SIMILAR CIRCUMSTANCES THE PROPERTY GOES TO TWO OUT OF FOUR CHILDREN, APPARENTLY THE ONLY TWO DAUGHTERS

Rembau Land Case 76 *of* 1920. *Collector : de Moubray.*

APPENDIX XVI

A CLAIM BY THE SONS AGAINST THE ANCESTRAL PROPERTY OF THEIR DECEASED MOTHER IS QUASHED IN CONSIDERATION OF THE DAUGHTERS REIMBURSING THEM THEIR EXPENDITURE OVER FUNERAL EXPENSES

Rembau Land Case 54 *of* 1920. *Collector : de Moubray.*

All five children, including males, claim the ancestral property of their deceased mother Alimah binti Siamat.

APPENDIX XVII

A WIDOWER RELINQUISHES HIS RIGHT TO *charian laki bini* TO HIS SON

Rembau Land Case 67 *of* 1920. *Collector : de Moubray.*

No objection is made by the *waris* of the deceased.
The widower's wish is given effect to.

APPENDIX XVIII

Rembau Land Case 86 *of* 1919. *Collector : de Moubray.*

[*This was the case which shook me in my absolute trust in Parr and Mackray's book.*]

In *re* Estate of Sianoh.
Claimant : Niah binti Singah, daughter of Sianoh by her first husband.
Objector : Alias bin Kumarudin, second and surviving husband of Sianoh.

The estate consists of five pieces of ancestral land, one of which, that comprised within Entry No. 232 in the Mukim Register of Nĕrasau, Alias claims on the grounds that he planted it up with rubber himself, and one piece of land acquired jointly by Sianoh and Alias, E.M.R. Nĕrasau No. 930.

It is also admitted that another piece of jointly acquired land is already registered in the name of Alias.

Alias' claim to the ancestral land on account of improvements is not allowed by the collector and not revived on appeal.

The claim to the *charian laki bini* is decided by the collector purely on Parr and Mackray's book.

The collector first presumed wrongly that according to Parr and Mackray " jointly acquired property " had to be divided equally. Following this line of argument Alias had already clearly got his share and might furthermore be liable for the funeral expenses which had been paid, not by him, but by the children of deceased.

Going more carefully into the matter later the collector found that according to Parr and Mackray an equal division of property was only carried out in childless marriages (top of p. 76), after the survivor had paid the funeral expenses (half-way down p. 91), and after excluding certain types of property from the division (top of p. 91). Furthermore unless there is issue (bottom of p. 75 and bottom of p. 90) the joint earnings are retained by the wife to support the issue.

In the course of the appeal all three *lĕmbagas*, although giving evidence on different sides, concurred that the custom was quite different from the above, namely *mati bini tinggal ka laki* : the whole of the jointly acquired property must go to the survivor after paying funeral expenses.

Judgment was given accordingly.

NOTES OF EVIDENCE

. . . . 15.1.20. . . . 86/19.

Objector: Mohamed Alias bin Kamarudin.

He says that (i) Nĕrasau 930 (a.a. 271) he took up himself and registered in his wife's name.

(Admitted that Singah is a mistake for Sianoh.)

(ii) Nĕrasau 232 he has planted with rubber himself.

No claim to other lots.

Sianoh married twice, first Singah, father of Niah and then, on his death, the objector.

Zainal bin Singah (elder brother of Sianoh) says Singah died about 16 years ago.

Agreed that as things actually happened and apart from the intentions of either party Sianoh binti Mamat was not looked after by her husband and was taken by her children to the house of Datoh Maabot at Pilin, where she died after an illness of 5 months. Her two children paid all the expenses of her illness and funeral amounting to $203. With regard to Nĕrasau 930 agreed that it is *charian laki bini*, but that at the same time another piece of land, also *charian laki bini*, was registered in Mohamed Alias's name.

Agreed by all parties that all 5 other lots are being held under the custom [i.e. are ancestral. G. de M. 23.3.30].

Claimed by Mohamed Alias that Nĕrasau 232 has been planted with rubber by him (condition not altered).

Claim not good.

For order, see file. (All to claimant.)

(Sd.) G. A. DE C. DE MOUBRAY.
15.1.20.

JUDGMENT

The essential fact is that all the pieces of land except E.M.R. 930 are admitted by all parties to be "*Tanah Pesaka*", which I take to mean in this case ancestral land held under the custom.

There can be therefore no doubt whatsoever about E.M.R. 232, the custom being that the husband can have no claims to compensation for improvements made by him to ancestral property,

With regard to E.M.R. 930 I have taken the point of view that the most favourable argument for the objector is the one which he urges, namely that following the Rembau marriage custom the whole of "*charian laki bini*" should be divided equally on "*cherai*" as it is admitted by all parties that the *charian laki bini* was already before the *cherai mati* registered in equal parts in the names of the two consorts, the objector can have no further claim to the half registered in the deceased's name, which according to the custom must descend to the female heirs.

If he chooses to press the question of payment of funeral expenses any further I think he will lay himself open to having the land already registered in his name taken from him.

(Sd.) G. A. DE C. DE MOUBRAY.
21.1.20.

NOTE TO JUDGMENT

The claim in the memorandum of appeal that at *cherai mati* the *charian laki bini* may be divided equally is quite right. According to Parr and Mackray (top of page 91) the way this inequality works is by excision from the rule of division of certain classes of property.

But a much more important cause of inequality is the custom described at the foot of page 75: " (i) Property acquired during wedlock, the joint earnings of man and wife, descends on the death of the wife to the female issue. . . ."

There is no doubt whatever that if strict observance of the custom were to be enforced the appellant should have taken from him the land which has been alluded to as his share of the *charian laki bini* and he should look for maintenance to his mother's relations.

(Sd.) G. A. DE C. DE MOUBRAY.
9.3.20.

COPY OF NOTES OF APPEAL IN THE REMBAU LAND CASE NO. 89/19

Appeal in Land Case No. 86/19.

Appellant: Mohamed Alias bin Kamarudin.
Respondent: Niah binte Singah.

Mr. Harte Lovelace appears for the appellant.

Datoh Gempa affirmed: Lĕmbaga of Batu Ampar (after the circumstances of the case have been explained). When the husband dies all the *pencharian laki bini* goes to the wife; when the wife dies it all goes to the husband. Niah, as the daughter of a former marriage, cannot get any of the *charian* of the second marriage. When the Datoh Perba was a witness in a case of this kind before the *Hakim* at Seremban a few years ago, he ruled as above, although it conflicted with the *hukom sharak.*

Examined by Niah: Any land taken up after the second marriage would come under *charian laki bini* of that marriage. People cannot divide the *charian laki bini* during marriage.

Datoh Sri Maharaja Ahmad: Lĕmbaga of Paiah Kumboh tribe (cirs. expld.). Repeats the words of the Datoh Gempa and says that the daughter of the wife by the first husband can only inherit the *pesaka* of her mother but none of the *pencharian* of the second marriage.

Examined by Niah: If there were no *herta pesaka* to come down upon the *herta pencharian* of the second marriage would be liable for the wife's funeral expenses (but see his later evidence). I do not know if she had any *herta pesaka* or who paid Singah's funeral expenses.

Respondent's Case.

Zenal bin Singah affirmed: Brother of Niah. I applied for registration in Niah's name of 6 pieces of land. Two acres were taken out for Sianoh and 2 for Mohd. Alias, so he has had his half-share of Sianoh's property. I spent $203·08 on funeral expenses of Sianoh, Mohd. Alias paid nothing.

Examined by Harte Lovelace : Niah received 5 *pesaka* blocks of lands, one has rubber planted in it about 3½ years old.

Maabot bin Haji Matsah affirmed : I know that Sianoh and Mat Alias took land, 2 acres each. When she was dying he neglected her. Niah and her brother spent $203·08 on her account and on her funeral. I lent Niah's brother the money. I am his near relation. I asked Mat Alias for money but he would not pay anything.

Datoh Perba Salleh affirmed : I have heard and agree with what the other two *lĕmbaga's* said about the *adat*; I told Mat Alias to pay the funeral expenses of his wife. Niah and her brother paid and I mortgaged their (*pesaka*) *sawah* for this purpose. According to the *adat* the husband Mat Alias should pay the funeral expenses out of the *pencharian laki bini*; I told Niah's brother to make out the account he produces for $203·08½.

Examined by Mr. Harte Lovelace : The *pencharian laki bini* is liable for the funeral expenses before the *herta pesaka*. I don't know that Mat Alias paid any of the funeral expenses. Mat Alias never agreed to pay $50 funeral expenses.

Datoh Gempa (recalled) : The *pencharian laki bini* is liable for the funeral expenses before the *herta pesaka*. In this case Mat Alias planted rubber on the *pesaka* land and therefore rendered it *pencharian laki bini*.[1]

Datoh Sri Maharaja Ahmad (recalled) : If there are both *pesaka* and *pencharian*, the *pencharian* is liable for the funeral expenses.

Ordered : That the land comprised in E.M.R. 930 is "*pencharian laki bini*" and that it be transferred to Mohamed Alias, the husband of the deceased owner Sianoh, so soon as he shall have discharged the funeral expenses of the deceased's funeral, which are chargeable to the "*pencharian laki bini*" in this case. The Collector to take an account of the said funeral expenses with the parties on both sides and to see that they are paid before executing the transfer.

(Sd.) W. P. HUME,
B.R.N.S. 18.5.20.
(Sd.) DATOH PENGHULU HAJI SULONG
(in Malay).

Inquiry into Funeral Expenses.

The Collector's Order was as follows :

"I am of the opinion that Niah and Zainal stood the expenses of the sickness and the funeral and [the feast of the] 3rd day. With regard to the expenses of the 7th, 14th, 40th, and 100th days it is not clear who bore them.

"No expenses incurred after the Resident's hearing can be counted.

[1] The latter statement is an instance of the wild evidence *lĕmbagas* give in support of claims by members of their tribe.

	$
Sickness	30.00
Funeral and 3rd day.	76.50
	$106.50

"To be paid within 7 days.

(Sd.) G. A. DE C. DE MOUBRAY.
12.8.20."

The expenses claimed are of interest:

Item.		$
1.	On account of her sickness . . .	30.00
2.	On expenses incurred on the day of her death	50.00
3.	3rd day feast	55.48
4.	7th day feast	18.35
5.	14th day feast	8.89
6.	40th day feast	9.97
7.	100th day feast	28.79
8.	For padias sembahyang, 9 months, 180 gantangs of rice @ $1.40 a gantang . .	252.00
9.	Padias Puasa	56.00
10.	Upah tahalil	7.00
11.	Purchase of "haji"	25.00
12.	Purchase of tombstone	10.00
	Total	$552.28

APPENDIX XIX

Statement by Datoh Gempa Maharaja Zakaria at Chengkau on 19.8.26.

Kadimkan.

Ada dua bangsa kadim:

Kadim adat, dapat yang di-bĕri hidop.
Kadim adat dengan pesakō, buleh mĕnuntut.

Kadim adat, yang di-bagi idop itu, charian seja. Kadim adat dengan pĕsaka dapat chukup sharat dapat bahgian, hĕrta pesakō, tanah dengan gelaran sĕkali. Kadim adat dengan pĕsaka misti panggil undang. Jikalau tada undang tabuleh jadi kadim pĕsaka. S-ekor krĕbau buleh, dua ekor buleh.

Toh Sedia Rajah Sĕrun sudah ambil dua anak, satu nama Sitam bin Salleh, dalam pĕrut bini dia juga, satu anak orang China Shamsiah bĕli. Waktu dia mati mĕnuntut dua2. Brapa yang dia bagi idup itu-lah dia dapat. Tuan Mackray jadi kuasa. Sampai Court hakim. Shamsiah ada dĕkat rumah sahaya; di-plihara lagi. Sitam ada lagi.

Bertueh bertauladan
Bertunggul, berpĕmarasan.

Tanda-nya ada.

Toh Sĕrun sembeleh kambing, ta-sembeleh krebau. Fasal itu

anak ta-buleh menuntut. Tapi dengan sĕmbĕleh kambing kadim adat, sembĕlĕh krĕbau dengan lĕmbaga adat juga, ta-buleh menuntut.

Translation of the Above

Adoption.

There are two sorts of adoption.

In the case of *kadim adat* the child can only obtain property by gifts made by the adoptive parent during her lifetime.

In the case of *kadim adat dengan pĕsaka* the child can inherit.

The gifts which can be made in *kadim adat* are of acquired property only.

In *kadim adat dengan pĕsaka* the rights of inheritance are inclusive —of ancestral property, land and tribal dignities.

For *kadim adat dengan pĕsaka* the *Undang* must be invited (to the ceremony). Should the *Undang* be absent *kadim pĕsaka* cannot take place. A buffalo can be slaughtered for the feast, or two (a buffalo is necessary).

Datoh Sĕdia Raja Sĕrun (a former Undang of Rembau) adopted two children ; one was named Sitam din Salleh, a member of the same *pĕrut* as his wife, one was a Chinese girl he had bought named Shamsiah.

When he died both children claimed to inherit. They obtained only so much as had been given them in the lifetime of Toh Sĕrun. Mr Mackray was administrator. The matter went to the Supreme Court. Shamsiah lives quite close to this house, she is still looked after. Sitam is still alive.

(The saying is :) " .... [I am not clear as to
.... " the meaning]

The meaning of which is that of things which have validity there is always visible evidence.

Toh Sĕrun only slaughtered goats, not a buffalo. It is because of that that his children had no claim to inherit. However, though the slaughtering of goats makes it *kadim adat*, the slaughtering of a buffalo with the presence only of *lĕmbagas* would made it *kadim adat* also, and there would be no claim to inherit.

APPENDIX XX

INHERITANCE OF *charian bujang*

Rembau Land Case 77 of 1920. Collector : de Moubray.

In *re* Estate of Sitam bin Haji Abu.

A piece of land was registered in the name of Sintan binti Haji Abu, admitted to be a mistake for Sitam bin Haji Abu, the deceased.

The land is planted with rubber.

Rahim bin Haji Abu claims as male *waris jantan*.

Jain bin Haji Daud claims through a verbal agreement by which he has occupied and developed half the land.

Sintan binti Siali objects on behalf of her child by the deceased, Siti binti Sitam, on the grounds that the land was the *charian bujang* of Sitam before her marriage, that it increased in value

during marriage, and that at divorce Sitam promised this increase of value to the child Siti.

At a later date the Collector joined as claimant Asah binti Solam, as female *waris jantan*.

It is held that the land was in fact the *charian bujang* of Sitam between divorce from his first wife Riah and marriage with Sintan, that the latter is however estopped from claiming at this stage on account of any increase in value as such a division consequent on such a claim should have been made at the time of divorce.

Jain bin Haji Daud's claim for a half-share is admitted.

Asah's claim on the other half-share as only female *waris* of Sitam is held to be good, but she is permitted to relinquish half her share to Rahim, nearest male *waris*.

NOTES OF EVIDENCE

Claim for E.M.R. 475 Spri, registered in the name of Sitam, by Rahim bin Haji Abu and Jain bin Haji Daud.

Objector: Sintan binti Siali on behalf of Siti binti Sitam, daughter of deceased.

All parties admit that the land was the *charian bujang* of deceased.

Sintak (divorced widow of deceased) maintains that she worked with deceased in opening the land and that Jain was not seen on it.

Jain maintains that Sintak only worked on the land for about a year, after which Sitam divorced her. Sintak admits divorce but 5 years' work.

Post poned.

5.8.20.

All admit that Sitam was a man, therefore the name should have been registered as Sitam bin Haji Abu and not Sitam binti Haji Abu.

Rahim bin Haji Abu and Jain bin Haji Daud deny that the land was *charian bujang* as formerly stated by them: but *charian laki bini* with a former wife named Riah, who was divorced, and therefore *dapatan* of the objector.

The mother of objector states that the property was *charian bujang*, after the divorce from Riah.

All parties admit that the child present, Siti, is the daughter of Sitam and Sintan and is aged 7–8 years.

The claimants admit that Sitam lived as a bachelor for 5 years before marrying Sintan.

Therefore Riah was divorced at least 14–15 years ago.

Note: Malay Assistant Suboh states that he has searched the divorce registers without being able to find the divorce of Sitam and Riah.

E.M.R. 475 was issued in the place of a.a.6/09 Mukim of Spri, alienated on 2.7.09, i.e. 11 years ago.

Therefore the land is clearly *charian bujang*.

Jain bin Haji Daud bases his claim for a half-share on an alleged verbal agreement made while Sitam was *bujang* for the consideration of the part cultivation of the land by him—no written agreement—relation of Sitam: his and Sitam's grandmother were sisters.

Perang Radin, Sae, Sindin, Lamin were present when the agreement was made. He states that the land has been divided into two: he planted his rubber later than Sitam, and Sitam's share has been tapped while his own has not.

M. A. Suboh states that soon after the birth of the objector Sitam divorced Sintan, went to live with the claimants, married another woman, divorced her and again went to live with the claimants.

Datoh Sri Maharaja Amat states:

The custom about *charian bujang* as applied by the Datoh Rembau in the case of Dahan, a man of the Selemak tribe, is as follows: A half-share of the increase in cash value during the succeeding marriage is paid to the wife on divorce (this increase in value being treated as *charian laki bini*). The land returns to the husband: on his death it goes to the *waris.*

Charian bujang is treated as *pĕmbawa.* It is the *pĕndapatan* of the other party. On death it goes to the *waris* even if the man has only married once and the widow survives him. *Charian bujang jantan* cannot go to the children. The children can only inherit the share of the increase in value that goes to the mother.

Charian bujang prĕmpuan goes to the children; if there are no children to the *waris betina.*

The *waris jantan* consist of 1° the mother: if there is no mother, the sisters; if no sisters, the *sanak ibu* F; if no *sanak ibu* F, the *sanak datoh* F—the *sanak nenek* F; if no *sanek nenek, sanak moyang* F; if no *sanak moyang* F, to the male heirs; if no male heirs as far as *sanak moyang* the land reverts to the State.

Datoh Mandalika Pajar states:

The custom about *charian bujang* is as follows: if a man acquires property, then marries, then dies, his *charian bujang* goes to his children: if he has no children to the widow.

The custom about *hĕrta pĕmbawa* only applies in the case of divorce.

Charian bujang jantan goes to the children on the death of the man whether the wife dies first or not.

Hĕrta pĕmbawa can originate either as *charian laki bini* or as *charian bujang,* whether there has been *chĕrai hidup* or *chĕrai mati.*

This is all nonsense. I have been mixing up *adat* with *hukum shara.* Note: an hour has been lost in cross-questioning this man and getting him to admit that he has been trying to delude me.

Datoh Pĕrba Salleh states:

One must distinguish between *hĕrta di-bawa, hĕrta pĕmbawa* and *hĕrta tĕrbawa.* The *charian laki bini* which a man takes to a new wife on re-marriage is *hĕrta di-bawa. Hĕrta tĕrbawa* is the property given to a son by his mother. *Hĕrta pĕmbawa* originates solely in *charian bujang.* On divorce the acquirer keepts it: on his death it goes back to his mother. (Half an hour discussion not recorded: I think this *lĕmbaga* is also talking nonsense.) *Hĕrta di-bawa* goes to the person in whose house (or from whose house) deceased died.

Datohs Pĕrba and Sĕri Maharaja agree to the proposition I put up:

That there are two sorts of property one can take to a wife's house:

1° ancestral property which is called *hĕrta tĕrbawa* and must be returned intact to the mother.

2° charian property of whatever origin, which is called *hĕrta pĕmbawa*, and whatever the origin is subject to a uniform custom.

Both datohs agree that *charian bujang* cannot be inherited by the children in the case of *chĕrai hidop*—though in the case of *chĕrai mati* the rule applies as in the case of *charian laki bini* about *jĕput* and *tĕntu-kan* a part to the children.

(Sintan given an opportunity of replying:)

She admits that the *charian bujang* cannot go to the children. But she says that on divorce her husband said he would leave the child the share of the increase of the value of the land during her married life with him. She says she did not obtain this share on divorce.

The *lĕmbagas* present state (correctly) that it is of the utmost importance that the division of the charian should be made before completion of divorce. The woman can obtain redress at the time of divorce, none afterwards.

The true *waris* of Sitam must be called.

Postponed to 13.8.20.

13.8.20.

Asah binti Solam states:

I am the only female *waris* of Sitam.

I want half the land due to the *waris*.

I do not know how Jain was connected with the land.

Rahim states:

I know that Jain cultivated the land and had half given him by the deceased.

Asah states:

If Jain gets half the land I am prepared to go halves with Rahim in the remaining half.

Ordered: that E.M.R. Spri 475 be registered in the names of Jain bin Haji Daud as to one half-share, and Rahim bin Haji Abu and Asah binti Solam each as to a quarter-share.

(Sd.) G. A. DE C. DE MOUBRAY.
13.8.20.

APPENDIX XXI

Adoption.

COPY OF NOTES IN THE TAMPIN LAND CASE NO. 7/26

Present:

The applicant: Limah binte Haji Idin.

The Objector: Badoh bin Enchom (states that his sister Siti is also an objector).

Lĕmbaga Datoh Sĕri Maharaja.

Applicant states Tombam was her mother. Objector says not—her adoptive mother. *Lĕmbaga* agrees with objector.

Applicant states that Dahan is a witness on this point.

Dahan called, states that Kiah was Limah's mother, not Tombam.

On the point of adoption: they are agreed that there has been no "*kadim-kan*"—no sacrifice of a goat. It is argued by the *Lĕmbaga* (Datoh Sĕri Maharaja Ahmat) that this ceremony is not necessary in the case of near relatives. It is agreed that Tombam and Limah are of the same *Suku*. Her claim of being of the same *prut* is contested. It is agreed that 3 to 5 years after the "adoption" Tombam transferred to Limah 2 *sawahs* and 1 *kampong*—all *pĕsaka*—and one rubber estate—*charian*.

It is now agreed that all parties belong to the same *prut*: S. Layang.

Sitot, an old woman, gives the following pedigrees:

Timah	Relat............	Lelu
|	|	|
Selam D O	Sijah	Siau
|	|	|
Siti	Bannuo	Sitot
|	|	|
Kiah	Tombam (deceased)	Siti (objector).
|		
Limah (applicant)		

She thinks Limah and Tombam far apart. Siti is one of the objectors. Though it is *charian laki bini*—Loyok [1] died first and so it becomes Tombam's on the principle *mati laki pulang kĕpada bini*,[2] pp to 11.8.26 in Rembau.

(Sd.) G. A. DE C. DE MOUBRAY.
15.7.26.

Hearing at Rembau 7.10.26.

Tampin Land Case No. 7/26.

Taken together with Rembau L.C. 66/26.

The property claimed is all that of Tombam binti Bakar deceased.

Tombam's property consisted of:

1. E.M.R. Selemak 268, *Kampong* at S. Layang.
2. E.M.R. Selemak 28, ½ share, rubber at Padang Lebar.
3. E.M.R. Selemak 270, *sawah*, at S. Layang.
4. E.M.R. Selemak 267, *sawah*.

These were transferred to the adopted child Limah by transfers No. 90 and 91/22 both signed on 29.8.22.

Certificate of registration of death No. 103/26 shows Tĕmbam binte Bakar to have died on 6.4.26.

E.M.R. 28 is said to have been "*charian*" the others ancestral (in the Paya Kumboh tribe). The above lands do not form the subject of these applications. There are two more pieces:

I. E.M.R. 269, *sawah* at S. Layang (customary land) the subject of Rembau L.C. 66/26—it is ancestral.

[1] Husband of Tombam (more properly Tĕmbam).
[2] *On the death of the husband it goes to the wife.*

II. E.M.R. 249, rubber land at Kĕru, the subject of Tampin L.C. 7/26, *charian*.

Limah binte Haji Idin states : The land at Kĕru was the *charian* of my father Loyok and of my former husband Dollah, from whom I was divorced. Loyok was the husband of Tĕmbam and thus my adoptive father. So the land was the *charian laki bini* of Tombam and Loyok and of Dollah and myself. Loyok died a long time before Tombam. The rubber was big before he died. Dollah divorced me a long time ago (Badoh states in 1909).

(Sd.) G. A. DE C. DE MOUBRAY.

Limah applies for both pieces of land. Badoh opposes both applications, on behalf of Siti (present).

The following witnesses are called for evidence on the custom.

Suboh bin Bakin, Malay Assistant at Pĕdas, states : There is only one form of " *kadim* ". One can sacrifice goats or buffaloes as one pleases, the result is the same, the *lĕmbaga* and *buapak* are called. It is the same whether or not the *Undang* is called. If he is not called the adopted child can still inherit ancestral property.

There is no difference between " *kadim adat* " and " *kadim adat dĕngan pĕsaka* ". If the two parties are of the same *suku* but not of the same *prut*, the ceremony of slaughter of an animal and the presence of the *lĕmbaga* is necessary—but if the two people are actually of the same *pĕrut*, the ceremony is not necessary ; the adopted child can inherit the property of the deceased.

I maintain that there are not two varieties of *kadim-kan*, one which allows property to be given during lifetime only, another which allows inheritance also.

Questioned by Badoh. Suboh confirms that within a *pĕrut* no ceremony is necessary to allow inheritance by an adopted child.

(Sd.) G. A. DE C. DE MOUBRAY.

Datoh Gĕmpa Maharaja Zakaria states : I am the *lĕmbaga* of *suku* Batu Hampar, *Mĕnangkabau*.

There are two sorts of " *kadim-kan* ", " *kadim adat* " and " *kadim adat dĕngan pĕsaka*."

The differences is as follows : in " *kadim adat* " the adopted child gets what is given during the lifetime of the adoptive parent, in " *kadim adat dĕngan pĕsaka* " the child can get ancestral property and can inherit—in *kadim adat* the child cannot be given ancestral property.

Then there is the " *kadim* " pure and simple. This was done by Pĕnghulu Sĕrun,[1] he adopted two children without calling *lĕmbagas*. He had other children but by another wife who had died. His second wife Nanjong adopted Sitam, a relation of hers. Later she adopted Samsiah, a Chinese child they had bought. They gave *kampong* and *sawah* to both. I don't remember whether they were ancestral lands or not. Nanjong is still alive. Pĕnghulu Sĕrun died. Sitam applied to the Court for some of the land, but she did not get anything. Many of us *lĕmbaga* were called as witnesses.

[1] A former *Undang* of Rembau.

This is not a new custom as I remember it in force in Pĕnghulu Sĕrun's time. Ever since I can remember the *Undang's* presence has been necessary at the ceremony before property could be inherited.

By Limah :

Q. What about my pieces of land given to me by Tombam? They were ancestral. (It is ascertained that the land was customary and that Datoh Sĕri Maharaja Amat gave his consent.)

A. If the *waris* do not resist it such a gift can be made.

(Sd.) G. A. DE C. DE MOUBRAY.

Datoh Sĕri Maharaja Amat states: I am the *lĕmbaga* of *suku* Paya Kumboh, Darat.

There are two kinds of *Kadim :*

Firstly, "*kadim pĕsaka dan adat*". A person calls the "*Undang dĕngan lĕmbaga lapan dĕngan dua blas*", and the "*waris yang ĕmpat*", and gives "*kĕrbau sekor, bras lima puloh, wang dua bahara*". If the adopted child is adopted in this fashion into the tribe of Paya Kumboh he can obtain the title of Seri Maharaja.

There is another kind applicable only to a foreigner who wants to "*masok*" a *kampong* only. He has to slaughter a goat, *wang dua puloh sĕrpi.* Then both have to "*chĕchah darah*"; one finger is dipped into a bowl of the blood and then placed on the other person's forehead. The adopted person cannot marry into that *kampong* after that. The adopting person can only give acquired property to the adopted—and the adopted person can inherit no property at all.

There is another way of *kadim* between people who are already related. Sometimes the adopting person already has a child, sometimes not. The adopted child is simply brought home. The whole of the *kampong* has to be called but nothing is slaughtered. The child who is thus called to look after the older person can inherit any property of the adopting person.

There is another way of *kadim-kan* in which the *lĕmbagas* of the two *sukus* only are called, not the *Undang.* The adopted child can inherit even ancestral property, but not the chieftainships in the tribe. This is the *kadim adat.* Only acquired property can be inherited. Of the inheritance of property by an adopted child who was already related and informally adopted I remember the following instances. Siti Aman ♀ adopted a relation of hers named Kĕledek ♀ —Siti Aman died about 6 years ago—but the inquiry was only about a year ago, Kĕledek was given the land (ancestral) by the Collector. This was in the face of opposition. It is the only case I remember.

By Badoh : I admit that you opposed the transfer of the land by Tombam to Limah. The former *Lĕmbaga,* Toh Semajō Leman, opposed on your behalf, but as Tombam said that she had brought up Limah since she was small, I agreed to the transfer and you withdrew your objection.

(Sd.) G. A. DE C. DE MOUBRAY.

7.10.26.

Datoh Mĕrbangsa Kamā, lĕmbaga of suku Paya Kumboh, Baroh, states:

In the case of adoption from another *suku*—which alone is "*kadim-kan*"—a buffalo has to be slaughtered and the *Undang* invited. If the adoption is within the *suku* it is no longer "*kadim-kan*". There is no need for any ceremony or calling the *waris*: the person is simply treated as the child of the adoptive parent and given property with the knowledge of the *lĕmbaga*—ancestral property can be given. On the death of the adoptive parent the adopted child can inherit property, even ancestral property.

There is difference between *kadim adat* and *kadim pĕsaka*, but they both refer only to the adoption from outside the *suku*—in the first instance the "*tua suku*", *lĕmbagas* and *buapak* of the same *pĕrut* are called—no property can be inherited; but either acquired or ancestral property can be given during the lifetime of the adoptive parent.

(Sd.) G. A. DE C. DE MOUBRAY.

Bakar bin Haji Dahil, Malay Assistant, living at Gadong, states:

Kadim adat: is proved by the presence of the *lĕmbagas*. Both acquired and ancestral property can be given to the adopted child and inherited by the adopted child.

Kadim pĕsaka is the adoption between relatives—between people of the same *suku.* There is no ceremony. The child is simply taken to live with the adoptive parent; such a child can inherit ancestral property.

I remember an instance: Haji Nanjong, wife of Datoh Pĕnghulu Sĕrun adopted Sitam, who was already related to her, without ceremony. Sabar, Sitam's true mother, died. Another child of Sabar applied for transmission to herself of her property. Sitam objected and got an equal share. I admit this is not an instance of inheritance of an adoptive mother's property. My knowledge of the custom on this matter is not from former instances—but from hearing people talk.

(Sd.) G. A. DE C. DE MOUBRAY.

The former witnesses were called by the Collector: the next witness is called by Badoh.

Datoh Sinda Engon bin Mohamed: I am the *lĕmbaga* of the *suku* Sĕri Lĕmak.

There are two kinds of *kadim,* "*kadim adat*", "*kadim pĕsaka.*"

Kadim pĕsaka : this is the *kadim* of someone from another *suku* with the slaughtering of a buffalo. If the person is of another *suku* the *Undang* and the *lĕmbagas* have to be invited. Ancestral property can be inherited. A person of the same *suku* informally adopted can inherit ancestral land. My wife Lĕbik was adopted in this manner by Timah. They were both of the same *pĕrut*—I think they had a common grandparent. On the death of Timah my wife inherited her land, ancestral land, a *kampong* and a *sawah.* I can't remember the number of the titles. It happened in about 1919.

Both of these are called *kadim adat, kadim pĕsaka* and *kadim hĕrĕtō*,[1] the inheritance is of *adat, pĕsaka* and *hĕrĕtō.*

By Badoh. The property cannot be inherited by an adopted relative if there were objections by the *waris* at the adoption.

(Sd.) G. A. DE C. DE MOUBRAY.

Badoh suggests Datoh Pĕrba as another witness, but I have had sufficient experience of him not to want to waste my time on him.

Datoh Langsa Suleiman (called by Collector), *lĕmbaga* of *suku* Anak Acheh: If an older woman adopts without ceremony a younger woman of the same *pĕrut,* the latter can inherit the former's property on her death.

(Sd.) G. A. DE C. DE MOUBRAY.

Order E.M.R. 269 Selemak.
E.M.R. 249 Keru to be transmitted to Limah binte Haji Idin.

(Sd.) G. A. DE C. DE MOUBRAY.

Badoh says he wants to appeal.

JUDGMENT

The facts are either agreed to by all the parties, or not actively disputed by any of them, that the claimant Limah and the objector Siti are both very distant relatives of the deceased Tombam, and are of the same *pĕrut* as she was ; that Limah was adopted informally by Tombam, and given ancestral and acquired property by her during her lifetime.

2. The two bits of land the subject of the claim are firstly a piece of ancestral land (customary) in Rembau district, and secondly a piece of acquired land in Kĕru in which Limah has a certain direct interest, the land having been opened by Tombam, Tombam's husband Loyok, herself, and her husband Dollah—I am satisfied that the effect of the custom (not argued in this case) was for Loyok's share on his death to go to Tombam, and Dollah's share on divorce to go to Limah (except in so far as he could have claimed a share and made it good at divorce).

3. I have made no attempt to apportion this direct interest as between Tombam and Limah. There is no need to do so if it is held that Limah can inherit from Tombam.

4. The case turns on this question: can property be inherited by a child informally adopted by another person of the same *pĕrut* ?

5. The expert evidence is not unanimous on this point.

6. The correct course to follow at this juncture would be to ascertain whether there is a custom on this point common to the Peninsular Malays following matriarchal law, and whether this particular claim is or is not by way of exception to that general custom. Referring to Sivananania *v.* Muttu Ramalinga 3 Madras H.C 75–7 (affirmed by the Privy Council on appeal), it is clear from the language used by the judges of the High Court and of the Judicial Committee that a particular custom is only to be given weight to

[1] More properly *hĕrta,* meaning "property."

as against the general custom if the particular custom can be clearly proved.

7. Unfortunately nothing is known as to the existence of such a general custom—and I have not the time before my impending transfer to collect evidence on the point.

8. We are forced back to consider the weight of evidence on the Rembau custom. Datoh Gĕmpa and Datoh Mĕrbangsa are (except for Datoh Pĕrba, who is a most unreliable witness) the two most senior *lĕmbagas* in Rembau, both as regards rank and length of time they have been *lĕmbaga*. Their evidence is diametrically opposite.

9. All the other evidence, though conflicting on numberless other points, supports Datoh Mĕrbangsa's evidence on the point at issue.

10. I am inclined to give particular weight to the evidence of Suboh, M.A., living at Pĕdas, who is a Naning Malay, married a Rembau wife, has lived in Rembau for about thirty years and has on several occasions given expert evidence in the High Court. His statements are clear and logical.

11. The principle underlying this view of the custom is set forth most clearly in the Datoh Mĕrbangsa's evidence: that adoption within a tribe and from outside a tribe are two totally different things. He goes so far as to say that the term "*kadim-kan*" is applicable only to the latter.

12. Though it is not clear from the recorded evidence, my impression was that what was at the back of these men's minds was that the qualification for obtaining the "*pĕsaka*" of a tribe, i.e. for being eligible for election to the various chieftainships within a tribe, was the thing that really mattered. The inheritance of property was of minor importance compared to becoming an "*orang bĕradat*" (note that the terms "*Adat*" and "*Pĕsaka*" become very nearly synonymous when used in this sense). By a primitive method of reasoning if a certain thing will qualify a man to obtain the "*pĕsaka*" of a tribe, it will *a fortiori* qualify him for obtaining the "*hĕrta pĕsaka*" of a single member of the tribe. It is clear that a member of the tribe is without further ceremony eligible for the dignities in the tribe: so the necessity for ceremony in becoming eligible or the inheritance of property within the tribe vanishes.

13. I am furthermore inclined to think that the evidence in this case is as conclusive as one is likely to get in Rembau on a point of custom, so that this custom may be taken as proved for Rembau whether or not it agrees with the custom of other localities.

14. I accordingly hold that Limah has made good her claim to inherit both acquired and ancestral property from Tombam, though she was not adopted ceremoniously—on the ground that she was already a member of the same *pĕrut*.

15. The only other point which requires explanation is my holding a joint inquiry into the inheritance of customary and other land—the appeal in one case being to the Commissioner of Lands alone and in the other to the Commissioner of Lands sitting with the *Undang*; the matter being further complicated by the piece of acquired land being outside the sub-district of Rembau (though in an area which once formed part of Rembau).

16. It is I think clear from this case how undesirable it is for questions of inheritance to be split up under different jurisdictions. Both parts of the inquiry depend on the same issue, and it is in the interests of justice that this issue should be concentrated upon and thrashed out fully.

17. If I had not acted in this manner, either (*a*) I would have had to skimp both cases or (*b*) the Assistant District Officer Rembau would have taken one and myself the other. If we had come to a different conclusion on the main issue the result would have been farcical.

18. As it is I see no reason why on appeal on both the Commissioner of Lands and the *Undang* should not hear the evidence together and give a joint decision on the one matter, while the Commissioner of Lands gives his decision alone in the other.

19. I think it will be unfortunate when the new enactment makes such procedure impossible.

(Sd.) G. A. DE C. DE MOUBRAY.
8.10.26.

APPENDIX XXII

THE INHERITANCE OF ACQUIRED PROPERTY

Statement by Malay Assistant Bakar. 5.9.26.

Charian laki bini (joint conjugal acquisitions) in the case of *chĕrai mati :*

The general custom is "*mati bini pulang ka laki, mati laki pulang ka bini*" (on the death of the wife it goes to the husband, on the death of the husband it goes to the wife).

It applies without exception when the man dies first.

But there is an important exception when the woman dies first: that is when there are children. On account of the difficulty of the man bringing up the children half the property goes to the female relative of the mother who looks after the children in trust for them till they grow up (*di-wajibkan harĕtō pada orang mairō ana'*).

The *adat* of *jĕput* applies. *Jĕput* is obligatory and is always done. It is at the *jĕput* that it is ascertained that the man's *pembawa* is intact and that his share of the *charian laki bini* is defined.[1]

There is no *adat* of *tĕntukan* in such cases.

During the life of both parents *charian* property in any quantity can be given to grown-up children who have set up house for themselves (or are about to). Such property is left out of count at the *jĕput*. *Charian* property is never given to small children—for the reason that "*budak kĕchil kandong pada mak bapa lagi*" (little children are still dependent on their parents).

The claim of male and female children on the *charian* property of their parents is not equal. A son can only get a share with the consent of the daughters.

[1] The above was all confirmed later on the same day and quite independently by Che Mohamed Pilus.

In the case of a girl it is her "*hĕrta dapat dĕripada charian bapa dia*". She can charge or sell this property. (Note: the word *bapa'* is used though *ma'* would seem more logical; this shows that the whole of the property theoretically goes to the widower.)

The above-mentioned *pĕmbawa* of the son goes to his sisters on his death provided he has no children. This ranks with their *charian bapa dia.* (This he is not sure about).

If he has children the property goes to them.

So far as it continues from father to son it cannot become *hĕrta pĕsaka.*

Hĕrta dapat dĕripada charian bapa dia becomes ancestral on transmission to the daughters of those women, i.e. to the grand-daughters of the original couple (*jatoh kĕpada chuchu itu jadi pĕsakō dĕripada dia*).

Going back to the exception when the woman dies first: the half of the property which does not go to the deceased woman's relative in trust for the children goes to the widower. This property he can do what he likes with. On his death it goes to his *waris.* If his mother is alive it all goes to her. If she is dead it goes to his sisters. It goes only to the living sisters. Children of a dead sister are passed over (*tĕlintang dia sĕbab yang idop ada*). All the same they should give a share to those nieces.[1]

I am not sure when this property becomes ancestral.

This property is the man's *charian bini marin* (acquisition of his late wife) till he marries again when it becomes his *pĕmbawa.* He still has full powers of disposal over it.

Mati laki pulang ka bini. (On the death of the husband first the property goes to the wife.)

This property she can sell or charge as she likes.

On her death it goes to her daughters only. It is spoken of as *hĕrta dapat dĕripada bapa, charian dĕripada bapa,* or *hĕrta charian bapa,* sometimes as *pĕsaka dĕripada bapa.* I don't know when it becomes ancestral.

Chĕrai hidop (divorce).

The property is divided into two after making good the *pĕmbawa,* etc. The woman's share goes to the daughters only, as before. The man's share goes to the *waris* as before.

There is no *Jĕput.*

Charian bujang (bachelor acquisitions).

They remain with his maternal relations (*tinggal kĕpada saudara ma' dia*).

The only way the children can get it is if with the consent of his *waris* he gives it them during their lifetime. He is, however, free to sell or charge his *charian bujang.* The price of the land is, however, taken into account (*di-bachō juga*) at the *jĕput* or the settling of accounts on divorce.

[1] Confirmed by Che Mat Pilus: he adds that the man's *waris* would always in Pĕnghulu Sĕrun's time have been "*malu*" (shy) of taking the whole of the share that was due to them according to this custom. If $200 were due they would take say $10, if four buffaloes they would take one. The balance went to the other side in trust for the children.

APPENDIX XXIII

Statement by Ex-Datoh Rembau Haji Sulong bin Ambiah on 12.9.26.

Charian land becoming ancestral.

The *charian* of the mother becomes ancestral in the hands of the mother (*Charian ma' dia pesakō pada ana'*).

The strict *adat* is for the *charian ma'* to go to the daughters. An agreement or the *tĕntuan* of the father is followed so long as there is no dispute. If there is a dispute the strict *adat* must be followed.

The land becomes more strongly ancestral with each succeeding generation.

Land can go to the sons if there is a *pakat.* But the essence of the custom is that land should go to women. If there is a dispute it goes to the women. The acquired property of their parents can under certain circumstances be divided equally in the sense that the daughters take all the land and give the value of the sons' shares to them in money—particularly for the purpose of a pilgrimage to Mecca.

There is no difference in the custom as applied to *tanah tĕbus* and *tanah ta-bĕrtĕbus.*

All relatives can enjoy the fruits of a *dusun*, but only the registered owner can sell them for profit.

Ancestral land sold within the suku (e.g. to pay for a pilgrimage to Mecca).

The land becomes the *charian* of the person who buys it and transmission goes according to the custom concerning acquired land. But nevertheless it retains a certain ancestral status. Thus if it has been bought with money derived from the joint earnings of a man and his wife it becomes a joint conjugal acquisition (*hĕrta charian laki bini*). On divorce they are entitled to equal shares. But the land cannot be owned by a man, therefore the woman takes it all, and the man is entitled to be paid by her half the value of the land.[1]

Adoption.

The *kadimkan* (adoption) of Talib's second wife was quite in order. [This is about a case taken by Mr E. N. Taylor.] She was adopted not before me but before my successor, the present *Undang*. The fact that the *Undang* and *lĕmbaga* were present and the buffalo slaughtered is sufficient evidence. The wife was adopted as substitute for the elder wife (*kadimkan ganti bini tua*). You can *kadimkan* anyone to anyone else to be their brother or sistsr, not necessarily to be the son or daughter of the adopting person. (I consider the whole of the above to be highly suspect.—G. de M.)

It is the custom to mix the buffalo's blood with flour and water

[1] Mr E. N. Taylor noted against this for me: " If ever you develop this part be sure you get the case in Vol. I of Rembau Land Cases (Collector Pennington), where the couple bought the wife's *pĕsaka* out of their *charian*, and the daughters objected to the wife then *giving* it to the husband. *Held*, that the gift could not be allowed, as the man, if he survived, would only be entitled to reimbursement of the sum spent from *charian*, and the balance would go to the children. The distinction between ' acquired *pĕsaka* ' and ' acquired new land ' was discussed."

in a bowl and sprinkle it about. I have never heard of the buffalo's blood being smeared on the forehead of the person adopted.

If the *kadimkan* is by way of agreement only, without the presence of the *lĕmbaga*, the adopted person can't inherit. She certainly cannot inherit land which the *waris* resist. It is not sufficiently clear, certain (*trang, kokoh*), even as regards ancestral land the inheritance of which the *waris* don't resist. It is the same as regards acquired land.

It is true that there are two sorts of adoption. *Kadim adat* can be carried out in the presence of *lĕmbagas* with the slaughter of goats. This gives no claim of any sort over property. The adopting person cannot give land during her life to her adopted child. The only use of it is to bring the child under the same *lĕmbaga* (*tĕrlingkongan limbagō seja*).

Kadim adat dĕngan pĕsako is carried out in the presence of the *Undang* with the slaughter of a buffalo. This gives rights over property.

(Note: It is clear from the *Datoh's* statement, summarized above, that it is not the details of a ceremony that prove the event, but the persons present at the ceremony that prove it. The evidence of adoption is not sufficiently clear and overwhelming to be given effect to in the transmission of property if a *lĕmbaga* only has been present and a goat slaughtered. But something must really have happened if the *Undang* was present and a buffalo slaughtered. He then went off into a disquisition on "*pukol lantak*" which I have not recorded).

APPENDIX XXIV

Statement by Datoh Mosa Saïd (the oldest man in Miku, an extremely isolated kampong, surrounded by miles of jungle in all directions)

The saying "*mati laki tinggal ka bini, mati bini tinggal ka bini*" is known here.

I remember Me'erap dying about 8 years ago. She had 2 acres of rubber estate. It was divided equally between her husband and her child, a boy. He was small. He is at school now. A female relation of his took charge of him and of the land, but it was registered in his name. That is the custom; the husband and the children share. In this case the man is still alive. But if the man dies the custom is that the property goes to the children. The *waris* can't inherit. I remember an old instance, Dahi—who married a second wife. The property became his *pĕmbawa*, but it returned (*kĕmbali*), not to his *waris*, but to his children. It was on divorce (*chĕrai hidop*). The Collector ordered the property to go to the children on their paying back the funeral expenses to the *waris*. The custom is the same in the case of *chĕrai hidop* and *chĕrai mati*. The man's share eventually goes to the children.

Charian bujang jantan goes to the *waris*, not to the children.

In the case of such land increasing in value after marriage I think it goes to the children. I think there is some calculation of value.

Acquired land can be inherited by both male and female children; equally divided between them.

Land becomes ancestral on being transmitted to the second generation.

Adoption.

In the time of Pĕnghulu Sĕrun I adopted to a female relative of mine Tiriah and Sitam, both girls. I gave them *kampong, sawah* and house. They both died and their *waris* claimed the land. There was an inquiry before Pĕnghulu Sĕrun. I objected and he gave the land back to me. There was an appeal to the High Court at Sĕrĕmban and decision was affirmed. The adoption was carried out with the slaughter of a buffalo and in the presence of *lĕmbagas.* No *Undang* has ever been to Miku. Pĕnghulu Sĕrun said it was clear that adoption had taken place and for that reason would not give it to the girls' *waris.*

If I had died (leaving children) and not Tiriah, Tiriah would certainly not have got my property; my children would have got it.

There has not been a case here of a woman dying after adopting a child without a ceremony.

There is a saying about adoption: "*tinggal waris mĕnongke,*[1] *tinggal limagō*[2] *mōtā,*[3] *tinggal harĕtō*[4] *betuan ta jadi.*"

Charges over rice lands. In the case of a charge in which the chargee enters into possession of *sawah* and the owner wants to discharge the charge before term it is against the custom for him to be allowed to do so if *changkolling* (hoeing) has already started.

APPENDIX XXV

Statement by Datoh Sate (Sĕtia Maharajah) Salam at Sungei Ibu, Mukim Pĕdas, on 28.9.26.

Charian laki bini on death.

If there are no children: *mati laki tinggal ka bini, mati bini tinggal ka laki.*

If there are children: *mati laki tinggal ka bini*; the whole property goes to the children; none of the *waris* get anything.

If the wife dies the distribution of the property is in the discretion of the widower, but he should give some to the children (*mati bini hukum bapa; tapi patut bapa bĕri ka ana'*). The *waris* can't get any of it. I don't think it possible that the man could even divide the property between his *waris* and his children. What you tell me of the statements of Datoh Gempa and Datoh Sĕri Maharajah I think wrong. *Jĕput* does not affect matters.

Jĕput affects matters in the following way. Whether the husband or the wife dies the husband's relations (*sa-kadim,* pronounced *so-kodin*) come to the house on the hundredth day. When the wife

[1] Derived from *tongkat,* a stick. I am not quite clear as to the meaning of this.

[2] The local pronunciation of *lĕmbaga.*

[3] Derived from *membatal*: "in the absence of the *lĕmbagas* it is void."

[4] The local pronunciation of *hĕrta.*

"In the absence of property there is no ownership."

dies the ceremony is "*jĕput*". When the husband dies the ceremony is "*batang tuboh*"; the wife gives them a pair of trousers, a coat (*baju*), a hat (*kopiah*), a knife, a mat and a pillow. In either case all the property is read out so that there shall be no trouble subsequently about debts. The widow or widower has the disposal (*timbangan*) of the *charian laki bini*. This is the force of the saying "*mati bini tinggal ka laki, mati laki tinggal ka bini*". The widow or widower, as the case may be, reads out at the ceremony the way she or he proposes to dispose of the property. It is usual to give a little to the *waris*, but only by way of *pakat*, agreement. However, *pakat* itself is not desirable (*Alah adat tĕgah dĕ mompĕkat*; which is paraphrased as "*adat trang, pakat glap*"). (Malay Assistant Suboh confirms that this method of disposing of property is universal and that it happened in his own case when his wife died.) The *adat* only provides for property going to the children. The property goes to both sons and daughters. But you first separate off the things to which each sex has a right, *kampong*, jewels, clothes, and then divide the rest.

APPENDIX XXVI

Statement by Che Mohamed Pilus, Settlement Officer and Malay Magistrate, Tampin, on 7.10.26.

Adoption.

I remember an instance. Datoh Mĕndĕlika Ismael's mother-in-law was named Lesah. This Lesah was adopted by (*di-ambil oleh*) a woman of Bintongan named Liah. She was taken from Chenong in *mukim Chengkau* to Bintongan in *mukim Sĕlamak*. During her lifetime Liah gave her ancestral property to her. As far as I remember the *Undang* was not invited to the ceremony. The *lĕmbagas* I think were.

But as far as I remember it is unnecessary to call the *Undang* even if property is to be inherited after death. The *Undang* does not need to come into it if the *lĕmbagas* agree. There is a saying "*Bĕrdiri limbaga timba'* [*timbul* ?] *balek*", the meaning of which is that agreement between the *lĕmbagas* of the two *suku* is sufficient. With an adoption of this type the inheritance of ancestral property and the qualification for tribal chieftainships are both assured.

The differentiation between "*kadim adat*" and "*kadim adat degan pĕsaka*" is new, since I was young.

I have not followed the custom at all since Haji Sulong became *Pĕnghulu*. My father and Datoh Pĕnghulu Sĕrun were of the same *kampong*, and I was constantly at the latter's house, particularly after the death of my father.

If the adopted child is of the same *pĕrut* there is no need to *kadimkan*. The child has full rights of inheritance without this ceremony.

The ceremony of adoption was carried out formerly by slaughtering either a buffalo or a goat according to the means of the person. The buffalo was first washed and then the ceremony of "*bĕrchĕchah darah*" carried out. Both the parties dipped a finger in which

some of the blood had been collected. There was no making a mark on the forehead. Both parties dipping a finger in the blood was a sign that they had become one.

APPENDIX XXVII

Statement by Inche Mohamed Pilus, Settlement Officer and Magistrate, Tampin, at Tampin on 17.10.26.

Ancestral Property.

According to the old custom males could only hold ancestral property while holding it in trust for their nieces during the latters' minority. The father did not become trustee of his children's property.

There was no giving of a life-interest in ancestral property to an only son. Ancestral property could not go to males at all—even if there was no female third cousin.

This is wrong: it was possible for an only son to be given a life-interest in ancestral land. If there are daughters also the son can have a life-interest with their concurrence. In the case of four daughters, one of which dies leaving an only son, that son can be given a life-interest in his mother's share of the property on the death of his grandmother.

Ancestral land cannot become the *absolute* property of a male even in the absence of a female third cousin.

On the *sale of ancestral land* within the tribe to pay "*hutang pĕsaka*" the property remains ancestral in so far as sale and charging outside the tribe are restricted. If bought with "*wang charian laki bini*" (conjugal acquired money) by a couple who subsequently are divorced, the husband has a claim to half the value of the land as though it were *charian laki bini*, but being ancestral he cannot have a share in the land itself.

Charian bujang (bachelor acquisitions) becomes *pĕmbawa* and returns to the *waris*. If a piece of land was worth $100 on marriage and $1,000 at death, $100 in cash should be returned to the *waris*, the remainder of the value of the land is being dealt with as *charian laki bini*.

The wife and children have no claim on *pĕmbawa* for the reason that the *waris* have paid funeral expenses.[1]

Funeral expenses are payable by the wife if a man is married, by his *waris* if she is dead or divorced. A wife's funeral expenses are payable by the husband.

Charian bujang prĕmpuan (female bachelor acquisitions) are her *dapatan*. It may be derived for instance from the breeding and sale of buffaloes. The inherited property of a woman, her *charian bujang* and her share of *charian laki bini* in a former marriage, all form part of her *dapatan*.

The term *hĕrta tĕrbawa* exists, but is only applied to money or

[1] My translation from the Malay words of the speaker was probably wrong, what he said is more likely to have been: "The wife and children have no claim on *pĕmbawa* because of their having paid funeral expenses."

jewellery. The usual instance is the following: a man agrees to accompany a female relation on her pilgrimage to Mecca. He takes charge of all the money necessary on the journey as well as of her jewellery. If he dies before the pilgrimage starts this is called *hĕrta tĕrbawa*: it must be returned to the *waris.*

Charian laki bini.

In the case of divorce the property is divided into two. After making good the *pĕmbawa* and the *dapatan* the following things have to be separated off before the division takes place: the house, the woman's jewels, her clothes, the man's clothes and weapons. The house is a frequent source of dispute as it may have been rotten when the man married and completely rebuilt by him on a bigger scale. He nevertheless has no claim on its value. On the other hand, if the house has deteriorated the woman has no claim for the amount of the deterioration. This would even apply to the case in which the house was destroyed by fire a few days before divorce: it is an act of God (*kĕmalangan*).

In the old days if the man died in his *waris'* house the *waris* took the whole of his share. If he died in his wife's house the *waris* did not claim. This of course only happens in the case of *chĕrai mati* (divorce by death).

If there was no child by the marriage the woman gave an account to her husband's relations on the 100th day of the expenses and what was left over. The *waris* usually handed the whole of this over to her. At the most they took a quarter, a third or a half of it for themselves. If there were children she also had to inform them of the position. The *waris* never used to claim anything if there were children. The *waris* together with the widow used to apportion the property between the widow and the children. The sons usually get money, the daughters get land and buffaloes. This is the usual origin of *pĕmbawa* and *dapatan.*[1]

If the wife dies first the husband, at the ceremony of *jĕput*, makes clear the expenses and the property remaining thereafter. If there are no children that property is halved, the woman's *waris* taking a half, the man a half. This was spoken of as "*di-bagi bĕlah pinang*". The only thing that *tinggal ka laki* (i.e. that is not divided but devolves entirely on him) is the funeral expenses (*kĕrajat blanja*).

If there are children the share which the *waris* would otherwise get goes to the children. The children cannot get a share of the half the widower keeps for himself: it goes eventually to the *waris.* There were never any claims on it from the side of the children even if the amount of property was large. The *lĕmbaga* of the children's *suku* would have prevented it. It is, however, possible while the ceremony of *jĕput* is in progress, that is before the *waris* have left the house, for the widower to *tĕntu-kan* (bequeath) as much as he likes to the children. They have a claim on that.

The Ceremony of Adoption: chĕchah darah.

The *lĕmbagas* of both *suku* must be present (*di-ada-kan lĕmbaga timba' bale'*).

[1] Share of father's *charian laki bini.*

There is a feast (*kanduri*). The usual thing slaughtered is a buffalo. A little of the buffalo's blood is caught, *bĕda limau* (lime powder) is made. Rice and saffron are first ground together fine. *Limau langir* (a variety of lime fruit) are cut into quarters and pressed into a bowl of water. The people go down to the river. The two people, the mother and the child being adopted, rub their whole bodies with the powder (*bĕda*). Then the *ibu bapa'* of the mother's *prut* pours the lime water over each of their heads. This is called *mĕlangir*, i.e. bathing with *limau langir*.

On coming back from the river they *chĕchah darah*, both putting a finger into the blood. While the two fingers are in the blood the adopted child is told she has become a member of her new *suku*. It is said by the *lĕmbaga* in the following formula:

" *Ini hari Siti sudah jadi orang Sĕlĕmak*
Chichir sama rugi
Dapat sama belaba
Pĕsaka sama di-gilir-kan
Siapa bengko makan sarong." [1]

(This day Siti has become a member of the Selemak tribe
What dribbles away is a loss to all
What is gained is profit to all
Tribal dignities rotate evenly among all
Whoever is crooked eats this oath.)

That is the oath. The child itself makes no oath.

APPENDIX XXVIII

Statement by Malay Assistant Suboh at Rembau on 19.6.28.

Commonality of Property.

I can remember the time before titles were issued. When I was a boy there were no titles for land in Naning. Land was not owned by a *pĕrut* (*kumpulan pĕrut ta mĕnjadi tuan*) with the exception of orchard (*dusun*).

If there was no dispute, however, *kampong* and *sawah* were owned jointly by a woman and her daughters. When several daughters had married, usually, but not invariably, a partition was made. The saying

" *tukul lantak*
bĕtaĭ ŏmeh " [2]

refers to this partition. This partition was carried out with the help of *lĕmbaga* and *ibu bapa* (*Bĕrchampor limbaga dĕngan ibu buapa'*).

(The rest of the statement was recorded in Malay:)

(1) Hĕrta itu prĕmpuan yang punya tapi jantan mĕmrĕntahkan. Kalau gadoh panggil sa-kadim (bapa' saudara, kalau bapa' saudara

[1] Said to be equivalent to *makan sumpah*. I do not see how it comes to mean that.

[2] In Riau Johor Malay this would read " *pukul panchang* : *bĕrtahil ĕmas* ", hammer in the peg, weigh out the gold.

tada bahru abang adek). Kalau sa-kadim ta-buleh sĕlĕsai di-panggil ibu-bapa'. Kalau ibu-buapa' ta-buleh sĕlĕsai bahru panggil limbagō.

Tanah yang didalam tangan prĕmpuan milek prĕmpuan ; prĕmpuan yang mĕmrĕntah atas hasil-nya. Jantan bĕkrejo samō. Prĕmpuan membagi hasil. Kalau jantan ta-dapat chukup dia buleh chari lain, ka-luar.

Jikalau prĕmpuan kayō patut jantan yang na' kawin bawa harĕtō. Jikalau jantan tadō harĕtō prĕmpuan sĕgan, dan prĕmpuan sĕblah jantan malu. Yang di-bawa oleh jantan bukan tanah, mĕlainkan wang, chinchin, barang apō yang jadi harĕgō : krĕbau, kambing dia buleh bawa.

Ancestral Property.

Pĕsakō ŏmeh tadō di-katō : pĕsakō ŏma' dan, atau pĕsakō datoh dan.

Pĕsakō adat itu sudah lepas kepada ŏma' datoh itu. Pĕsakō adat berkena'an senjatō seja'. Barang yang sudah mĕnjadi pesakō adat ta-buleh di-jual.

Sitam and Suboh agree on the following :

A man marrying a woman who has two buffaloes : the buffaloes are *pĕsakō dapatan pada jantan*. He can't sell them, she can. He can however sell the calves. Her daughters on inheriting the mother's can sell them as they like. There is no restriction. *Krĕbau bukan harĕtō kĕkal.* They do not become *pĕsakō*.

(I continue in Malay :)

(2) Ladang ta-pĕrnah di-jadi pĕsakō mĕlainkan sukō jadi-kan pĕsakō. Ladang ubi, ladang padi, ladang gĕtah jantan buleh milek. Ladang dapat kepada anak prĕmpuan sĕlalu mĕnjadi pĕsakō. Kalau ta-sukō jadi-kan pĕsakō jadi-lah pĕsakō juga. Ladang getah bagitu juga. Sudah dapat kepada anak prĕmpuan jadi pĕsakō. Tapi buleh dapat jugō pada anak jantan. Makō yang dapat pada anak jantan belum pĕsakō.

" *Sa-kadim* " includes relations on the mother's side, *adek*, *abang*, bapa' and ma' saudarō, sa-pupu. Dua pupu tida' sa-kadim lagi-waris.

Adoption.

An old woman adopting a girl of the same *suku* can do so with or without a feast. The absence of a feast does not invalidate the adoption. (3) Buleh dapat harĕtō pĕsakō juga ; sudah pĕnat.

Orang luar yang tidak bĕrtali (sĕpĕrti orang Naning yang sudah dudok lama dalam Rĕmbau) hĕndak di-kadim-kan bahru buleh kawin. Jikalau tidak kadim siapa bayar hutang ? Orang luar itu buleh di-kadim dĕngan ta-panggil Undang ; tapi harĕtō pĕsakō ta-dapat. Harĕtō charian yang di-bawa orang itu, kalau sudah di-trang-kan masa kadim jadi pĕmbawa. Kalau krejō bŏsar dĕngan Undang orang Siam pun buleh dapat pĕsakō.

(The following is a translation of the passages recorded above in Malay :)

(1) That property belonged to the women but men could enjoy possession of it. If there was a dispute the near relations were

called in to adjudicate, in the first instance the uncle, if there was no uncle then the elder and younger brothers. If the near relations could not decide the matter the *ibu bapa* was called. Only if the *ibu bapa* could not decide it the *lĕmbaga* was called.

Land which was in the hands of women was their property; it was the women who had control of the produce. Men shared the work with them. Women apportioned the revenues. If a man did not receive (what he considered) enough he could look for a living elsewhere, in another country.

If a woman is rich it is incumbent on a man who wishes to marry her to bring property. If the man had no property the woman would be reluctant, and the women on his side would be ashamed. What is brought by the man is not land, but money, rings, anything that has value. He can bring buffaloes or goats.

Ancestral Property.

The term *pĕsaka mas* (gold heirloom), is not used—one speaks of an " heirloom from my mother " or an " heirloom from my grandmother ". [Note the play on the words *ŏmeh and ŏma'*, meaning respectively gold and mother.]

Pĕsaka adat (customary heirloom or customary ancestral property) is that which has descended from further back than one's mother or grandmother. The term *pĕsaka adat* is only used in connection with weapons. Anything which has become *pĕsaka adat* cannot be sold.

(2) *Ladang* (dry cultivation in fields) has never become ancestral unless it was desired to make it ancestral. Tapioca, dry rice and rubber plantations can be owned by men. Whenever *ladang* comes into the hands of daughters it becomes ancestral. That applies also to rubber estates. When it has come into the hands of the daughters it becomes ancestral, but it can be inherited also by the sons. Should it however come into the hands of the sons it is not yet ancestral.

(3) The girl can inherit ancestral property also—on the grounds of the work she does (for her adoptive mother).

Strangers who are not affiliated (to a tribe) (as for instance people from Naning who have lived a long time in Rembau) have to be adopted before they can marry—otherwise who would pay their debts? These strangers can be adopted without inviting the *Undang*; but the adopted inherited person cannot inherit ancestral property. If it has been declared at the time of adoption, acquired property brought by the adoptee becomes *pĕmbawa*.

If there has been a full ceremony in the presence of the *Undang* even a Siamese can inherit ancestral property.

APPENDIX XXIX

Statement by Datoh Gempa Maharaja Zakaria and his wife Simbok binti Datoh Sĕdia Raja Sĕrun on 19.6.28.

Communal Ownership.

There never was any communal ownership. As soon as a woman had grandchildren she divided the property, she herself taking a

share equal to that of her daughters. This share was her *kĕrajat blanja* (set aside to pay for the costs of her funeral). At her death whoever paid the *kĕrajat blanja* took that share.

Males did not manage the property: they only decided disputes between their female relations.

Males worked on their wife's land.

If the bride was rich the bridegroom would bring *pĕmbawa*, but not otherwise. A poor man rarely married a rich woman.

Ancestral Property.

Goats and buffaloes become ancestral "*pĕsaka bapa'*" or "*pĕsaka ma'*," but they can be sold like gold. Rice fields or *kampong* when inherited by children cannot be sold; *ladang* can be. When *ladang* has descended three times it becomes *pĕsaka nenek moyang*, and cannot be sold.

Kampong and *sawah* cannot be inherited by sons; *ladang* can be.

Adoption.

An old woman can take a girl of the same *suku* to look after her, provided she has no daughter, with or without a feast. The girl can inherit provided there are no objections. But the objection has to be made during the old woman's lifetime. If she does not inherit a share she gets payment for her work in looking after the old woman.

There is a second form of adoption. [The saying goes:]

"*Dagang bĕrtĕpatan*
Prau bĕrtambatan."[1]

Adoption in practice though not in theory is necessary for marriage.

There two sub-varieties of this form, *kadim adat*, for which goats are slaughtered and the *lĕmbaga* has to be present, and the effect of which is to make the adoptee eligible for the inheritance of property but not for obtaining tribal dignities; and *kadim adat dĕngan pĕsaka*, for which the presence of the *Undang* is necessary and a buffalo must be slaughtered. The adoptee can inherit both property and eligibility to tribal dignities.

Only women can be adopted *kadim adat dĕngan pĕsaka*. In the case of *kadim adat* men can be adopted—or women—even if the *waris* are not unanimous. The adoptee can obtain both rank in the tribe and tribal dignities. (?)

Property brought from another country becomes *pĕmbawa* if it has been declared at the time of adoption.

"*Chĕndrong mata*" is a little ancestral property given in the case of *kadim adat*—as a memento (*pĕringatan*).

[1] The meaning of *bĕrtĕpatan* was given me as "*bĕrsuku*"; i.e., belonging to a *suku*. The dictionary meaning of "*tĕpat*" is "exactly", "full". The meaning of the lines would thus be: "The foreigner who has become complete by affiliation to a tribe is as a boat which has its mooring."

APPENDIX XXX

NANING

Statement by Děmang Asah at Pěgoh, Alor Gajah, on 27.9.26.

I took up my government appointment when I was forty-five and have been in it thirty-seven years. I remember the days before the English had entered Něgri Sěmbilan. I am now in charge of six *mukims*.

Ancestral Property.

Ancestral property goes down to daughters only. It cannot be inherited by sons. But a mother can lend property to her sons during her lifetime. But this is never done in the case of ancestral property and only in that of acquired when the parents have a lot of property. After the son's death the property goes back to the *waris*. This property can be called either *pěmbawa* or *těrbawa*—the terms are interchangeable.

Bachelor acquisitions become *pěmbawa* and the *waris* get it. If it is rubber land gone up much in value—say worth $100 at the time of marriage and $1,000 at the man's death, the *waris* would get say $300 and the children say $700. I have been concerned in a great many inquiries about *charian bujang*, and the custom here is that the children get a share even if the land has not increased in value at all: "*anak banyak kuat*" (the claim of the children is very strong). This is not a new phase of the custom: it has been so all along. It was so fifty years ago.

Charian laki bini.

In the case of *chěrai hidop* (divorce) "*chari bagi*", divide in equal shares among men and women. But everything bought for the wife out of joint earnings, clothes, ornaments, house, is not divided. In the case of *kampong* the value of the land is calculated (*di-pukul hěrga*). The house is the woman's in any case. If she will pay the husband's share of the value of the land without the house she gets the whole *kampong*. Otherwise he can sell up the *kampong*. *Ladang* is divided equally. The man's clothes and weapons are in the same category: the woman has no claim on them.

The woman's share goes on her death to her children: it can go equally to sons and daughters: the sons can get a share because it is "*charian bapa—charian bapa-nya*" (their father's acquisition), but in my experience here they usually want their sisters to have the land.

The man's share is divided on his death between his *waris* and his children. The children have a claim as it is "*pěsaka bapa-nya*".

The property which has gone down to children like this is ancestral even when inherited by sons. They cannot sell it to anyone but their *waris*.

Chěrai mati.

On the death of the husband the joint conjugal ăcquisitions go to the widow on the grounds that "hers are the expenses" (*dia blanja*).

On the death of the wife, after deducting funeral expenses, the

children get half, the husband half. On the death of the husband the children get all his share, the *waris* get none. *Dĕripada nenek moyang waris ta-buleh daawa.* There is *jĕput* here, and this property is read out, but it does not go to the *waris*.

When the wife dies her relations look after the children. But the children themselves are registered as owners of land (*dapat kuasa*), not the relations who look after them. The husband never looks after the children : that is the Mohammedan custom, not the Naning custom.

Adoption.

Adoption is frequent. In the case of people who already have children it is a case of adoption of people coming from a distance.

There is only one form of adoption. It has no special name. The *pĕnghulus, sidang,* and *lĕmbagas* are called, not the Datoh Naning. A goat is slaughtered, not a buffalo. Prayers are recited and incantations over the blood, which is sprinkled. It is not put on the heads of the couple. The people thus adopted can inherit ancestral property.

It is possible for a male to adopt a woman as his *waris*.

APPENDIX XXXI

Statement by Dĕmang Haji Abdul Latib at Nyalas, in the district of Jasin, on 2.10.26.

I have been a *pĕnghulu* over forty years. I am now in charge of the following *mukims* : Nyalas, Chabau, Chohong.

At the time when I was first a *pĕnghulu* and at the time grants for land first came in the *adat Naning* was followed in all its purity. It was followed for about four years after the introduction of grants. Then with successive District Officers coming the *adat* was more and more relaxed.

The Rights of Males.

The true *adat Naning* did not allow for the inheritance of land by males at all, either ancestral or acquired, not even of rubber land. Males could inherit such things as buffaloes, goats, weapons and guns.

Now males claim even ancestral land, and such claims are allowed by the District Officers at Jasin. In my experience this always leads to trouble.

Charian laki bini.

The old *adat* was that on the death of the husband the property went to the widow—not to the widow and children—but to the widow only. At the ceremony of giving back the *batang tuboh* to the *waris* or later she could give shares to her children. When the widow dies and the property has been inherited by the children it has become ancestral. It cannot be sold or charged without the sanction of the *lĕmbaga*. This is not followed now—ancestral property is sold and charged to *chetties* and others. The *waris* are always very angry when this takes place. The woman's *waris* have no claim whatsoever on any of her *charian laki bini*.

The woman's "*dapatan*" goes to her own children on her death. Only if she has no children does it go to her *waris*.

(Note: *Dapatan* refers exclusively to the property the woman brings to marriage, *pĕmbawa* exclusively to the property the man brings. *Tĕrbawa* is not understood.)

The man's *pĕmbawa* goes entirely to his *waris* on his death—unless it has increased much in value since his marriage. If it has gone up say from $100 to $1,000 the *waris* would take $200 to $300.

Mati bini:

The *adat* "*mati laki tinggal ka bini, mati bini tinggal ka laki*" is known but not followed. As long as I can remember on the death of a wife without children the property has always been divided between the widower and the dead woman's *waris*. The division was arranged by a *pakat*[1] of the old people, it was not left to the widower to *timbang*.[2]

If there are children and the mother dies the property is divided between the widower and the children. The woman's *waris* get none. The widower "*timbangs*". He does that at the *jĕput* or before. The division is read out at the *jĕput*. According to the old *adat* he could only give it to the daughters. If there is only a little property it all eventually goes to the daughters. If there is much property, buffaloes, goats, etc., it can be divided between sons and daughters.

Chĕrai hidop (*divorce*).

Except for the house, which goes to the woman, the old custom was for all the property to be divided on a valuation. It is also the present custom.

The *pĕmbawa* must have been made clear at the time of marriage or it is not given back, it is treated as *charian laki bini*.

Whether there has been another marriage or not, on the death of the man, the *waris* always ask for the property which came to him on his divorce. So long as they make good the funeral expenses and expenses incurred during the man's sickness, they get this property.

If there were children by the divorced wife the *waris* should give half the *pĕmbawa* to those children.

Adoption.

There is only one kind of adoption here: with the slaughter of a goat and calling the *lĕmbagas*. The child can inherit acquired property, but no ancestral property or title. If there are other children the adopted child ranks below them. The adopted child can be given acquired property during the parent's lifetime and the parent can give instructions that a small portion goes to the child on her death, but that is all. There is no way of leaving ancestral property to an adopted child.

There is no ceremony performed with the blood of an animal.

[1] Agreement.

[2] "To weigh," to apportion according to his discretion.

Ancestral Property.

If ancestral property is sold in order to let a person go on *haji*, even if it is sold within a *suku* its ancestral status is lost (*sudah buang pĕsakō*).

If the children are grown up no ancestral property goes to the deceased's sisters on her death.

Weapons which are ancestral go to the deceased's sisters, and from them to their sons.

(Note: the above was a very clear and concise statement.)

APPENDIX XXXII

Statement by Orang Kaya Sĕri Raja Mĕrah Datoh Pĕnghulu Naning Alsat bin Haji Ahmat at Alor Gajah on 14.10.26.

Ancestral Property.

Property becomes ancestral when it is transmitted without money or work.

Thus if a couple die and leave only one piece of land which their children have to charge to raise money for the funeral expenses, and the children later pay off the charge by winning money in some way or other, that land has really been won back by their work and is not ancestral.

Only sons may be given a life interest in ancestral land (*sĕmĕntara hidup*) if his *waris* all agree, but not if there is any dispute. This cannot be done if there is a daughter. Even if the son has a female first cousin he cannot be given a life interest.

In the case of four daughters, one of whom dies leaving a son, the son can have no life interest in his mother's share of the grandmother's ancestral property; which is divided equally between the three sisters, unless one of the sisters gets a bigger share for looking after him.

Charian laki bini.

We have the saying "*mati laki tinggal ka bini, mati bini tinggal ka laki.*"

Property is given to the daughters when they marry, *kampong* and *sawah*.

If the husband dies first the remainder of the property goes absolutely to the widow, and on her death to the children. Her *waris* get nothing.

On the death of the wife, there being no children, all the property goes to the husband, unless during their lifetime the property has been registered partly in the name of the husband, partly in that of the *waris*, when the woman's *waris* get the land registered in her name.

If there are children the husband gets a half-share and the children a half-share more or less. The widower's share is not restricted to his *kĕpan*. The custom on divorce and death is really the same, with the difference that there is always bad feeling on divorce: each claims as much as possible; whereas at death they are prepared to give quite a lot to the relatives of the deceased. The children

of that marriage have no more claim on their father's share of the *charian laki bini*. Nowadays Mohammedan law is followed to the extent that the husband is expected to pay for the maintenance of the children even though their mother's *waris* are looking after them.

Chĕrai hidop.

On divorce the property (*charian laki bini*) is halved. There is no special claim of man or woman on particular parts of the property. The *hukum sharak* can, however, be used which prevents a man taking back what he has given to his wife as a present.

There is no claim if the wife's house has been allowed to fall into disrepair and her *dapatan* has thus diminished.

The whole of the *pĕmbawa* has to be proved (*saksikan*), including land. This is done ten days to a month after the marriage in the presence of all the *waris*. The woman's share goes to her children, the man's share to his *waris*.

Charian bujang.

The excess in value is counted as *charian laki bini*.

Adoption.

There is no way in which ancestral land can be inherited by a person adopted from another tribe. Ancestral land cannot even be given to a person thus adopted.

A person can inherit ancestral land if adopted from within the *suku* without any ceremony.

Adoption with *chĕchah darah* is only done when adopting foreign Malays.

Jauh mĕnchari suku
Dĕkat mĕnchari waris.

(Afar one seeks a tribe
Nearby one seeks maternal relations.)

You cannot adopt a person from one *suku* into another. A person can informally adopt under these circumstances and give acquired property.

Suku ta-buleh di-aleh.

(One's tribe cannot be altered.)

APPENDIX XXXIII

JOHOL

Statement by the Datoh Johol on 4.9.26.

My impression of what he said is as follows:

Charian laki bini.

On the death of the woman both maxims seem to apply simultaneously: "*mati bini pulang ka laki*" and "*chari bagi*". [I am not at all clear about this. I gathered the impression, which he would not however confirm, that the *adat* had been undergoing a change (chiefly in favour of the children)].

The property is divided into two halves (after subtraction of the burial expenses according to the economic situation of the family) : one half goes to the children (as heirs of the mother), the other goes to the man's *waris*. He however maintains a life interest. *Jĕput* is essential. [On the latter point he seemed to say that *jĕput* is a part of the custom which is never left out and is from that point of view essential.

I was left with even vaguer ideas as to *charian bujang jantan*. Is it the old custom that the children cannot possibly inherit ? and the new that they do inherit ?]

APPENDIX XXXIV

Statement by Datoh Gĕmencheh Ma'asin on 24.9.26.

Charian bujang jantan.

The *adat* is that on marriage it becomes *pĕmbawa* and therefore on divorce goes back to the *waris*. But if a marked increase in value has taken place during marriage there should be a division and the children should get a share. The division of *jŏrih* (sweat of the brow) should be equal.

I know a case, that of Mo'omin, where the man opened up a rubber estate during his bachelordom. The rubber was not quite tappable when he died leaving a child about five years old. In the case before the Collector it was ordered that the land should be transmitted entire to the man's sister. But in my opinion if the child claimed the land on growing up it should get it.

Charian laki bini.

Chĕrai mati.

If there are no children *mati laki pulang ka bini, mati bini pulang ka laki.*

If there are children and the husband dies the property can either go all to the wife or partly to the wife and partly to the children. If the wife dies the conjugal acquisitions are divided equally between the husband and the children. On the death afterwards of the husband the whole of his share goes to his *waris*, none of it to the children : it is not the children who have looked after him after the death of his wife. The *waris* have been responsible for him since then, so his share of the *charian laki bini* should go to them.

Chĕrai hidop.

If there are no children half the conjugal acquisitions go to the wife, half to the husband. The question of who is to blame is taken into consideration.

If there are children there is the same division into two. The wife's share goes to the children on death. On the man's death the whole of his share goes to the *waris* unless they agree to his giving a share to the children.

The same thing applies in *chĕrai mati* ; that with the concurrence of his *waris* he can *tĕntukan* a share to his children.

The *charian laki bini* is inherited by both girls and boys.

This property is not ancestral when inherited by the children: they can sell and charge it; but it is ancestral when it has gone down to the grandchildren.

APPENDIX XXXV

Notes taken in Tampin Letters of Administration, Suit No. 1 *of* 1926.

Estate of Rinam binti Ngah:

E.M.R. Gemencheh 776.
E.M.R. Gemencheh 1332.
E.M.R. Gemencheh 1328.
E.M.R. Gemencheh 1780.
E.M.R. Gemencheh 1781.

Present—Kaseh bin Lumbang (husband of deceased), Hassin bin Kaseh (their son), Datoh Bandar Mohamed Sahat, Lembaga suku Mungkal, who lives at Kampong Pulau Gemencheh. They agree that all five pieces of land are *charian laki bini*. That there is no *pĕsaka*, or *pĕmbawa* or *charian bujang*. They agree that the *adat* is *mati bini tinggal ka laki*. No debts. No objections.

L/A to Kaseh.

Note: the *adat* is that on his death the land should be divided among the children.

(Sd.) G. A. DE C. DE MOUBRAY.
28–8–1296.

The parties ask for an order concerning the distribution of the property. I will meet them on the land.

(Sd.) G. A. DE C. DE MOUBRAY.

L/A 1/26. Hearing continued in the field at Ayer Glugor, Gemencheh, on 24–9–26:

Ma'anor bin Punggo states: The *adat* in the case of *charian laki bini* is: if the wife dies the property goes to the husband. When the husband dies the children get it. If the children are already grown up the father can divide up part or the whole of the property among them.[1] If there are two children for instance it is proper that the children should each have a quarter and the husband retain a half. But when the husband dies his share of the property goes to the children. It most certainly does not go to his *waris*—because they have had no share in the acquisition of the property. However, if the man is rich and has say $3,000 worth of property the *waris* have a right to a small share—say to a buffalo (worth $60). The shares of male and female children are equal. It is not yet ancestral (*pĕsaka*) but "*akan jadi pĕsaka.*" On the death of a son his property goes to his *waris bĕtina*, i.e. his sisters, and is ancestral. On the death of these women (the daughters of the acquirers) and transmission to the grandchildren the property has become fully ancestral. While the property is in the hands of the children they can charge it freely but not sell it. If the father

[1] I was not aware at this stage that there was a question whether this division should not be made at *jĕput*: and did not raise the point.

does not look after the children but an aunt of theirs does, the property is divided equally between the aunt and the father. The aunt has it merely in trust for the children till they grow up. The father's share eventually goes to the children.

Charian bujang goes to the *waris*. But if the property goes up in value after marriage the increase in value becomes *charian laki bini*. In the case of *chĕrai hidop* the man's share of the *charian laki bini* goes to the children, not to the *waris*. If there are no children it goes to the *waris*. On *chĕrai mati* if there are no children the whole property goes to the husband, on his death to his *waris*.

(Sd.) G. A. DE C. DE MOUBRAY.

Note: I picked on Ma'anor for this evidence on the custom as he seemed to have the clearest intellect of any of those present.

Kaseh bin Lembang states:

E.M.R. 1326 I want to give to Siah.

E.M.R. 1781 to Siah and Indah.

E.M.R. 776 to Indah.

E.M.R. 1780 to Indah, Indah agreeing to give the [rubber restriction] coupons for alternate quarters to Siah, taking them the other quarters herself. E.M.R. 1332 I want to keep for my son Yassin and myself. A.A. 1/24 I want to keep myself.

(Sd.) G. A. DE C. DE MOUBRAY.

Note: the above settlement is arrived at as the result of a discussion. Kaseh, Siah and Indah agree to the terms of it. There are no objections. Kaseh is permitted to distribute the property accordingly.

(Sd.) G. A. DE C. DE MOUBRAY.
24/9/1926.

APPENDIX XXXVI

Statement by Datoh Mohamed bin Pungut, Pĕnghulu (elected) of Ayer Kuning at Tampin on 8.10.26.

Ayer Kuning is under Gĕmencheh and Gĕmencheh is under Johol, so the custom of Ayer Kuning is the *adat Johol*.

Males can own acquired land but not ancestral.

Charian laki bini.

On the death of the husband the property goes to the wife: "*mati laki tinggal pada bini, mati bini tinggal pada laki*". She can give to the children if she likes—during her lifetime or afterwards. It is not usually given during her lifetime. When given during her lifetime it is usually when the husband's *waris* come and *jĕput* and she gives them the *batang tuboh*.

Her children inherit the property in the following way. Sons get no land, only daughters get it. Clothes and ornaments go to the respective sex. The remaining property, buffaloes, goats and even rubber land is divided between the sons and daughters. *Kampong* and *sawah* on being transmitted to the daughters becomes ancestral property. Rubber land on the other hand always remains

"*pĕrniaga'an*" and never becomes ancestral. It is always bought and sold.

On the death of the wife the whole property goes to the husband. He can if he likes give a certain amount to the wife's *waris*: this is frequently done. He can "*timbang*" as regards the children, whether he gives them property at once, or he keeps it till his death. He does this either at the time he is *jĕput* or when he remarries. On his death his *waris* have a right to half his *charian laki bini*. During his lifetime he cannot give the whole of this *charian laki bini* to his children: a part, which need not equal a half, remains as his "*kĕpan*" which goes to his *waris* on his death. The object of this *kĕpan* is to pay for his maintenance by his *waris*, for expenses of sickness and funeral.

There is an old saying, "*Chari ta-buleh bagi, dapatan ta-buleh tinggal, pĕmbawa ta-buleh kĕmbali.*" The meaning is as follows: the *charian laki bini*, in other words the children, cannot be divided, they cannot be taken to another *suku*, the husband cannot take them with him, they must remain with the mother's *waris*. The *dapatan* in the shape of the man's *tikar bantal* (mat and pillow), being part of the woman's house are *dapatan*, cannot be kept, but must go back to the man's *waris*. The *pĕmbawa*, in the shape of the *mas kawin* (bride price), is kept. This saying is of course only "*takian*" [a skit on the better known statement: "*Chari bagi, dapatan tinggal, pĕmbawa kĕmbali*"].

The division of property between the children is the same as if the husband dies first.

To sum up:

If the husband dies first and there are children, on the death of the widow neither *waris jantan* nor *waris bĕtina* get anything.

If there are no children the *waris jantan* and the *waris bĕtina* each get half; and the same is true if the wife dies first: the property goes to the husband, but on his death her *waris* can claim a share. This is only applied when there is a lot of property. When there is little property the *kĕpan* is supposed to eat it all up: the general expenses of maintenance, sickness and death.

If the wife dies first and there are children, the *waris* only get anything if they did in fact maintain the widower, but this can be made good by the children in cash.

Chĕrai hidop.

First are separated off the *pĕmbawa* and *dapatan*, then the parts of the *charian laki bini* which pertain particularly to either sex, such as clothes, ornaments, weapons, and houses (which go to the woman), the remainder, including land of all sorts, *kampong* and *sawah* as well as rubber land, is divided equally.

If there are no children these shares go to the *waris jantan* and *waris bĕtina* on the death of the parties. If there are children it depends on whether there are both sons and daughters or not. The woman's share is divided entirely among her children unless she has only sons. In this eventuality his *waris* have a share.

The man's share on his death is divided between his children and his *waris*.

Charian bujang.

Bachelor acquisitions become the man's *pĕmbawa* when he marries. They go to his *waris* on his death unless he has children. If there are children the whole goes to his children on his death if they pay the funeral expenses.

The same thing happens if he divorces and marries again. The second wife bears the funeral expenses and the property is divided up among her children.

Adoption.

In Ayer Kuning we either kill a goat or fowls: we don't kill buffaloes; the *lĕmbagas* are invited. It is explained to the adopted person that he or she cannot marry into the adopting *pĕrut.* The adopted child, even if there are many other true children, can inherit a small amount. There used to be a ceremony of "*chĕchah darah*", but it is no longer carried out.

If a childless woman adopts a daughter of the same *pĕrut* and keeps her in her house many years, but without the above formal ceremony, the child can nevertheless inherit her property.

There is no way of adopting children so that they shall be eligible for the "*pĕsaka*", the tribal chieftainships.

The term "*chĕnderong mata*" is remembered, but has never been used in my time. It referred to a gift as from an adoptive mother to an adopted child.

The term "*hutang pĕsaka*" is still used. It refers to the expenses of marriage—I can't remember anything else it includes.

APPENDIX XXXVII

Statement by the Datoh Johol at Kuala Pilah on 13.10.26 *in the presence of the Datoh Ulu Muar and Inche Mohamed Pilus.*

Ancestral Property.

If the mother dies leaving only a son he can be given a life interest in the whole property. He must in fact be given a life interest in the whole property. The *waris* cannot claim any—except in so far as they hold it in trust for an infant. The old custom was for the son to get nothing—for the *waris* to get it all and to have the duty of maintaining the child.

The Datoh Ulu Muar agrees to the above.

If there are a son and a daughter the daughter gets it all—the son cannot get a life interest. But in the case of four daughters, one of which has died and left a son, the son takes his mother's place, the property is divided into four, the three daughters each take a third, and the grandson gets a life interest in a quarter.

Datoh Ulu Muar and Che Mohamed Pilus agree. (They say it is a question of "*piarōan adat*", "cherishing, taking care of the custom": their meaning is obscure).

This life interest of the male becomes his *pĕmbawa.*

If ancestral property is sold within the tribe, for the pilgrimage to Mecca for instance, the property remains ancestral. But if it

is clear that it was bought with "*wang charian laki bini*" (money forming part of the joint conjugal acquisitions) the husband has a claim on divorce. His claim is not on the land, which he cannot have, being ancestral in another tribe, but his share of the value.

All agree.

Charian laki bini.

If there are no children.

On the death of the husband the property goes to the widow; on the widow's death to her *waris*.

On the death of the wife the property goes to the widower; on his death to his *waris*. There is no way in which the property could end by being divided up between the *waris* of both sides. The reason of this is that the one who survives goes back to his or her *waris* and they, on their death, have all their expenses paid by their *waris*.

If there are children.

On the death of the husband the property should go to the widow only, in case of trouble when she marries again, but the property should be divided between her and her children. This would be read out at the *jĕput*, when the *batang tuboh* is read out. The property is divided equally between the sons and daughters. But this should be done after separating off women's clothes and jewels, houses, weapons, etc. The remainder is valued and divided equally.

All agree.

On the death of the wife half should go to the children, half to the husband. The husband's half cannot be inherited afterwards by the children but by the husband's *waris*.

All agree.

On divorce:

The *charian laki bini* is divided equally between husband and wife after separating off clothes, ornaments, weapons, house, and the *kampong* on which the house stands.

Property becomes ancestral on going down to the children. Rubber estates only are excepted. (The other two insist that it is not an exception: the Datoh Johol gives way.)

Adoption.

A child of the same tribe can be adopted without ceremony and in this manner acquire full rights of inheritance of property.

All agree.

If the adoptive mother has children of her own already she may adopt a child if none of her own are there to look after her, and the adopted child should then get a share.

All agree.

A child of another tribe must be adopted with full ceremony, inviting the *Undang*, slaughtering a buffalo, etc. There is no form of adoption calling the *lĕmbagas* only. The ceremony is *chĕchah darah*.

APPENDIX XXXVIII

JELĔBU

Statement by Datoh Mĕndĕlika Mĕntri Akhirzaman, Undang Jelĕbu, Abdullah bin Panglima Muda, at Kĕnāboi, on 25.9.26.

Charian laki bini.

Divorce.

There is a saying:

"*Suarang bĕrageh*
Sĕkutu bola [1]
Chari bagi
Pĕndapatan tinggal
Pĕmbawa kĕmbali."

(Joint property is apportioned,
What was joint is cleft,
Acquisitions are divided,
Dapatan remain,
Pĕmbawa return.)

So the property is divided into two equal parts.

When the woman dies her share goes to the children. If there are no children it goes to her sisters. When it has come to the children it is *pĕsakō ma'*.

When the man dies the whole of his property goes to the children—under all circumstances—even if he is very rich the *waris* get none. Only if there are no children do the *waris* get it. This property is the *pĕsaka bapa* of the children. The land must go to the girls.

Nothing brought by the married couple in the way of clothes, jewellery, krises, can be divided.

"*Yang bĕrtangkai buleh di-jenjen*
Yang bĕrtali buleh di-ela
Yang di-bilang di-bagi."
(Things that have handles can be carried away,
Things that have fastenings can be pulled away,
Things that can be counted are divided.)

The man keeps all clothes and weapons he has bought out of joint earnings—the woman all her jewellery even though valued at thousands of dollars.

Rubber land is *pĕrniaga'an* (merchandise) and can be divided, but the site of the house (including *kampong*) cannot be "counted" and so remains with the woman, however much work the man has put into it.

It is only when all clothes, jewellery, houses, etc., have been separated, taken by the person to whom they should go, that the division of the remainder, the *pĕrniaga'an*, is carried out.

It is the same in the inheritance of property by children. The land is taken by the girls as well as jewellery and women's clothes,

[1] The dialect form of *bĕlah*, to cleave in two.

weapons, etc., by the sons. It is only then that the remainder, goats, buffaloes, etc., are divided into two.

But in Rembau the *lĕmbagas* do not follow the custom consistently. The saying is applicable to them:

"*Pĕrahu karam sĕkrat*
Limau masam sĕblah."
(A ship wrecked at one end
A lime acid on one side.)

Marriage terminated by death.

"*Mati bini tinggal di laki*
Mati laki tingal di bini."
(On the death of the wife it remains with the husband
On the death of the husband it remains with the wife.)

When the wife dies the whole property goes to the husband and with it the children. It is for him and not for the deceased wife's female relations to look after the children. They only look after the children if the husband dies. All this property goes down to the children on his death.

He has limited powers of disposal of this property. He must keep at least one "*tĕmpat tinggal*" (home): *kampong* and rice-field. Rubber land and extra rice-field and *kampong* he can sell. The woman's clothes and jewels he cannot sell. These and the one *tĕmpat tinggal* he must keep for the daughters.

The custom of *jĕput* applies. The man is *jĕput* on the hundredth day. *Pĕmbawa* is read out and also *charian.* The reason for the latter is to make things clear, to make it clear that the man cannot claim to be a poor man (and therefore come upon his *waris* for support.)

Charian bujang jantan (male bachelor acquisitions) are *pĕmbawa* and only come to the children if he has no *waris.* If the land has gone up in value much during marriage, the *waris* only get the value of the land at the time of marriage, and the land itself goes to the wife or the children according to the circumstances as *charian laki bini.*

The same happens in the case of the woman. A piece of cleared land given her by her mother is planted up by both of them: it is her *dapatan.* Her *waris* have a right to the value of the land when given her by her mother. [If she dies without children ?]

Dapatan can be used only of property brought to marriage by a woman; *pĕmbawa only of property brought by a man.*

Pĕmbawa and *tĕrbawa* are absolutely synonymous terms. *Tĕrbawa* is not commonly used. The word is ordinarily used say of a heavy log: *ta-tĕrbawa,* I can't carry it. It is not according to the custom for a woman to lend ancestral property of hers to a son. There is a saying, "*Alah adat tĕgah pakat*" (a settlement by agreement in defiance of the custom is prohibited). But nevertheless a woman could lend ancestral property to her son if she liked. But I have never met a case of it. I think that if it did happen it would lead to disputes.

Adoption.

There are two kinds of adoption, *kadim adat* (which can also be called *kadim adat dĕngan pĕsaka*), and the other sort *kadim shara'*.

In the latter sort ancestral land and the right to ancestral titles can be inherited. In the other nothing can be inherited. During the life of the adopting person he or she can give property to the adopted child and nobody can stop them. (I did not ask how far this could extend to ancestral property.) But after death the adopted person cannot claim to inherit. The proof of adoption is not strong enough. There is no ceremony in this form of adoption.

In the other form, the *kadim adat*, a full ceremony is carried out. *Lĕmbagas* and *undang* have to be present, a buffalo slaughtered, money given to the *Undang*, and rice distributed: "*krĕbau s-ekor, wang sa-bara, bras lima puloh.*" (One buffalo, a *bara* of money, fifty measures of rice.)

The buffalo is first ceremoniously washed, then slaughtered:

"*Darah di-kachau,*
Daging di-makan,
Doa di-tampong,
Sĕtia di-laboh."
(Blood is stirred,
Flesh is eaten,
Prayers are offered,
Faith is plighted.)

The interpretation of the saying is as follows: After the *waris* have given their consent (*waris mĕnyuka*) a mark is made on the head of the adopted person with some of the blood collected from the buffalo as it was slaughtered (*darah di-kachau*), the meat of the buffalo is eaten at a feast (*daging di-makan*), prayers are offered up (*doa di-tampong*),[1] and the two persons take oaths of fidelity to each other (*sĕtia di-laboh*).

Adoption is frequent here, even when the woman already has children of her own. The adopted child ranks equally with her own children.

Kadim adat is always by a woman. A man can only adopt by the *kadim shara'*.

APPENDIX XXXIX

Statement by the Datoh Jelĕbu on 18.6.28 *at Kuala Klawang.*

Communal Ownership.

There has never been any communal ownership in Jelĕbu. Property has always been divided among daughters when they have become old enough to marry. This rule has also applied to orchards.

[1] *Doa di-tampong* refers to the assembly, as they say "*amin*" at the end of the prayer "receiving," it with open hands (*tadah* or *tampong*). I am not quite clear what the underlying meaning of this "*tampong*" is. Do they imagine they are opening their hands to receive the blessings from the prayer? or do they receive it so as to pass it on unitedly? Europeans do not in praying open their hands palm upwards in the attitude of "*tadah*", but bend their heads over hands closed together in an attitude of humility.

Managership by Males.

Males have only occasionally managed property: for the purpose of trade in produce. Any near relation was as it were made attorney, but he had no power of disposal of land.

The *ibu bapa* was not manager; his duty was to prevent alienation from the *prut.*

The relation of lĕmbagas towards their wife's tribe.

The whole household of a *lĕmbaga* is freed from the jurisdiction of his wife's tribe.

Ancestral Property.

Land and weapons become *pĕsaka adat.*

Buffaloes, goats, etc. become *pĕsaka mas.* They can be sold out of the tribe. The custom concerning them is the same as for *charian.*

Rubber land becomes *pĕsaka mas,* it cannot be called *pĕsaka adat.*

Adoption.

There is no need to adopt a foreigner for him to be able to marry a Jelĕbu woman.

There are two sorts of adoption, *kadim hukum* (adoption according to Mohammedan law), and *kadim bagi adat* (adoption according to the custom).

A person adopted according to *kadim hukum* may only be given acquired property, he may inherit no property whatsoever. Any Mohammedan, Jelĕbu or foreign, may be thus adopted.

A person *kadim bagi adat* can inherit ancestral property. This applies to foreigners also.

Property acquired previous to adoption becomes *pĕmbawa*; on their death if still unmarried it goes to their adoptive parent.

It is ordinarily women who adopt; in the case of a man adopting some one he cannot transmit his property

It is unusual for the person adopted to be a male.

Formerly all foreigners came under the *Datoh Dagang*: they were not adopted, neither men nor women. Menangkabau Malays on the other hand simply entered the appropriate tribe.

APPENDIX XL

JĔMPOL

Statement by the Datoh Jĕmpol at Jĕmpol on 13.10.26.

Ancestral Property.

Ancestral land has never yet been held here by males. If a woman dies leaving only a son he cannot inherit even a life interest in the land. The man has to be cared for entirely by his *waris.*

Charian bujang.

If a man has no children his bachelor acquisitions go back to his *waris*—the whole of them.

If the *pĕmbawa* went up much in value after marriage the increase in value is estimated. If the value was $100 at marriage, $1,000 at divorce, the $100 would go to his *waris,* the remaining $900 would be divided.

" Duit bĕrbilang, padi yang bĕrsukat
hĕndak di-saksikan dĕngan tĕmpat sĕmĕnda."
(Money which can be counted, padi which can be measured, must be checked off with the bride's relations).

Money and padi must be declared to become *pĕmbawa* ; buffaloes and land need not be declared as they are their own witness.[1]

Charian laki bini.

Divorce.

The property is divided—after putting aside clothes, ornaments, weapons—not the house. The house cannot of course be divided and goes to the woman, but she has to pay [her share of the value].

There is a saying :

" Chari ta-buleh bagi
Pĕmbawa ta-buleh kĕmbali
Pĕndapatan ta-buleh tinggal."
(Acquisitions cannot be divided,
Pĕmbawa cannot be returned,
Pĕndapatan cannot remain.)

The acquisitions which cannot be divided are the house ; the *pĕmbawa* which cannot be returned, the bride price (*mas kawin*) ; the *pĕndapatan* which cannot remain, the bedding (*tikar bantal*).

The *pĕmbawa* and *dapatan* must be made good. The house being *dapatan* must be made good. If it is in bad order the man must repair it, or, if necessary, rebuild a house on the same site.

The woman's share goes to her daughters only, not to her *waris* nor to her sons—except only in the case of plantations.

The man can give what he likes of his own share to his children at the time of divorce : that is the meaning of *suarang berageh* : the rest is inherited by his children.

Hitherto in Jĕmpol sons have never been given any *kampong* or *sawah* : though they may have a share in plantations (*kĕbun*). Sons do not want a share in *kampong* and *sawah.*

Death.

" Mati laki tinggal ka bini
Mati bini tinggal ka laki
Yang mati di-kĕrajat-kan
Yang hidop di-piarō."
(On the death of the husband it remains with the wife.
On the death of the wife it remains with the husband,
He who dies is buried,
He who lives is cherished.)

While the parents are still alive the custom demands that whenever a daughter marries they should give her a piece of land. They don't wait till their death to give it.

On the death of the husband the property does not go to the wife but to the children, the wife thereafter " *mĕnumpang* " with

[1] Inche Mohamed Pilus, who was present, commented : there is a slight difference in Rembau, money, padi and buffaloes have to be declared.

her daughters (is supported by them). If the children are still quite small, however, the mother gets the property.

If there are children the mother's *waris* have no claim on her death.

On the death of the wife all the ancestral property which may have been "*tĕbus*" (bought out of the joint earnings) goes to the daughters. The *charian* property proper goes to the widower. At the *jĕput* he decides how much is to go to the children and how much he keeps. What he keeps is his "*kĕpan*" (his shroud) and his children have no more claim upon it. It goes to his *waris*.

Land becoming Ancestral.

Land inherited by the children is ancestral. *Kampong* and *sawah*, which can only be held by women, are *pĕsakō pada limbagō*; *kĕbuns*, which can be held by sons are *pĕsakō pada hĕrĕtō*.

There is no such thing as a life interest in land by males.

Adoption.

There is no adoption here. There is never adoption of anyone of another tribe. Informal adoption of very near cousins takes place, but not of distant relations. The children informally adopted would even if not adopted have had a claim to the person's ancestral property.

APPENDIX XLI

SUNGEI UJONG

Statement by Inche Omar bin Montel, Assistant Collector of Land Revenue Kuala Trĕngganu, born at Pantai in Sĕremban District, on 19.4.1929.

Pĕmbawa.

Tanah tiada di-bĕri oleh waris. Tiga hari lĕpas kawin laki bini pĕrgi mĕnyembah mĕntua, mĕntua-nya bĕri dengan chukup lengkap pĕrkakas dapor, mangkok pinggan, talam, bintang (tĕmpat ayĕr panas) dan duit juga, dan satu pĕrsalinan prĕmpuan. Itu pada pehak orang kĕbanyakkan. Jikalau prĕmpuan itu orang kaya dan waris nĕgri tĕrpaksa mak mĕntua mĕmbĕri dĕngan priok blanga, pĕrkakas chukup dan satu pĕrsalinan, tĕmpat tidor dan krĕbau atau lĕmbu. Ini-lah yang mĕnjadi pĕmbawa.

Pĕmbawa laki-laki tiada di-bacha.

Bila pĕrgi menyalang,[1] itu prĕmpuan bawa kueh-kueh. Bila balek dia bawa pĕmbawa itu.

Besok adek-beradek prĕmpuan di rumah dia bĕri laki-laki gĕlaran. Mithal-nya kalau laki-laki ahlim di-panggil "Karimalin". Kalau dia pĕndekar di-panggil dia "Nekarmalin". Pĕrbilangan-nya:

"Kĕchil bĕrnama, gĕdang bĕrgĕlar."

Bila sudah tĕtap gelaran itu dia kata "Ini-lah pĕndapatan Nekarmalin" dengan di-bachakan pĕndapatan. Yang lazim di-bacha hĕrta pĕsaka, di-sĕbut juga rumah. Yang lazim kampong,

[1] Mĕnyalang = mĕnyembah mĕntua, pĕrgi bĕrkĕnalan sama mĕntua.

sawah dan rumah. Spĕrti krĕbau, kambing, ladang, jikalau mak bapa' suka mĕmbĕri dia bĕri kemdian. Pĕmbĕrian yang kĕmdian mĕnjadi dapatan juga tapi tidak rajin susah krana tidak di-bachakan.

Waris jantan ada kreja itu. Dia datang dengan jĕmputan.

Saya ta-biasa dengan jantan yang ada hĕrta sendiri, spĕrti charian bujang. Kalau ada hĕrta bagitu barangkali di-bacha.

Dapatan.

Dapatan yang sudah naik hĕrga spĕrti ladang gĕtah yang bahru bĕrtanam masa kawin, pada chĕrai mati laki dapat satu bahgian, pada chĕrai hidop tidak.

Pada masa chĕrai hidop di-bacha sĕgala hĕrta di rumah prĕmpuan. Di-panggil tĕmpat sĕmanda (waris prĕmpuan). Kalau kaya, dan waris nĕgri juga, di-panggil waris jantan. Orang yang tidak buleh mĕndapat Datoh Klana di-panggil " orang suku ". Kalau prĕmpuan orang suku laki pĕrgi rumah dia s'orang sĕhaja. Kalau prĕmpuan waris nĕgri tĕrpaksa laki pĕrgi dĕngan waris sĕblah dia. Jikalau waris ta-pĕrgi buleh di-denda oleh Undang kalau ia mĕngadu. Pĕrbilangan-nya:

" Pĕrgi bĕrsuloh
Pulang bĕrgĕlap "

Prĕmpuan yang waris nĕgri ta'ĕndak macham itu.

Jikalau dapatan spĕrti krĕbau kambing bĕrtambah banyak masa kawin tidak juga jantan dapat bahgian.

Bila jantan yang kawin dĕngan prĕmpuan kaya bĕrchĕrai dia jatoh miskin sangat. Tapi bĕrkasch-kasehan sĕblah waris-nya. Prĕmpuan itu bĕla dia.

Ta-rajin prĕmpuan mĕnaroh dua tĕmpat tinggal mĕlainkan bĕraleh tĕmpat. Jikalau bagitu rumah yang di-buat atas ladang di-jadi-kan sa-charian.

Sa-charian.

Chĕrai mati.

Pĕrbilangan : " mati laki tinggal ka bini ; mati bini tinggal ka laki " tada saya dĕngar di Sungei Ujong.

Mati laki.

Kaedah-nya di-bagi dua : sa-bagi pada waris laki, sa-bagi pada prĕmpuan. Bagitu kalau tada anak. Jika ada anak dia dalam timbangan waris jantan. Dia bĕrkuasa ambil sĕparoh kalau suka. Yang saya sudah jumpa di-ambil sĕparoh atau lĕbeh pun pehak waris jantan, kalau ada anak pun. Dĕripada dahulu. Tiada patut bagitu. Gĕrak sĕkarang dia ta' ĕnda' ikot lagi : lawan pehak anak.

Nampak-nya adat pada chĕrai mati dan chĕrai hidop sama.

Mati bini.

Anak dalam jagaan tĕmpat sĕmĕnda (waris bĕtina).

Jĕmput jantan. Pada kreja itu buleh jantan timbang atas bahgian. Pada masa mak saya mati bĕrdua mĕninggalkan satu ladang gĕtah. Orang tua saya sĕrahkan sakali pada anak prempuan, dia tĕntukan pada dia. Dia balek dĕngan kain sahĕlai sapunggong. Waris sĕblah dia ta-gadoh. Dia ta-balek pada waris. Hajat dia na' mĕmbĕla anak-anak sĕhaja.

Wajib waris jĕmput. Sĕlalu di-jĕmput juga.

Tĕntang pĕnĕrima'an jĕmputan : Mak saya mati. Waris jĕmput orang tua saya ; dia kata : jĕmputan waris dia dia tĕrima juga, tapi dia suka membĕla anak, dia na' dudok dĕngan anak-anak. Ta-buleh kata ta-tĕrima jĕmputan krana sudah jadi adat.

Kalau jantan ta-balek ka rumah waris wajib di-hantar balek pĕmbĕrian dahulu.

Pĕnjaga'an anak.

Waris bini yang mĕnjaga.

Jika masa jĕmput laki kata dia na' bĕla anak dia dudok di rumah bini dĕngan waris-waris yang datang dudok rumah itu juga. Dia bĕla anak bĕrsama dĕngan waris itu. Dan jika ia kawin lain, ia ta-buleh dudok di rumah itu lagi—ia pĕrgi dudok rumah bini bahru.

Hĕrta pĕsaka.

Ada dua jĕnis : pĕsaka bagi undang dan pĕsaka bagi hĕrta. Pĕsaka bagi undang itu, tiap-tiap undang ada pĕsaka bagi limbaga-nya. Di-bawah limbaga itu, buapa', di-bawah buapa' jua', di-bawah jua' itu pĕgawai mĕsjid. Tiap-tiap gĕlaran itu mĕndapat bahgian hasil nĕgri. Gĕlaran itu yang pĕsaka.

Pĕsaka hĕrĕta satu jenis sĕhaja mĕngandongi kampong, sawah, rumah, sĕnjata. Saya rasa krĕbau, kambing ta-masok. Kalau hilang kampong, sawah rumah atau sĕnjata mĕnjadi bongkar kĕlak pehak waris ; jika laki bini bĕrdua menghilangkan hidopan tidak mĕnjadi bongkar.

Tĕntang masa yang charian mĕnjadi pĕsaka ; jikalau ma' bapa sudah bĕri tanah charian pada anak prĕmpuan dan ma' bapa' mati tanah itu sudah mĕnjadi pĕsaka sama juga jikalau ladang.

Masa ini buleh di-bĕri ladang gĕtah pada anak jantan. Masa dahulu saya ta-dapat ingatan. Hĕrta didalam tangan anak jantan atau bĕtina walau pun di-katakan pĕsaka, buleh di-jual, blum pĕsaka bĕtul. Sudah turun kĕpada anak-nya pula' bahru pĕsaka bĕtul, ta-buleh jual di-luar suku.

Tanah charian pĕmbĕrian pada anak jantan dapat kĕpada anak dia. Nampak-nya dalam hal pĕmbawa kuat anak.

Kadimkan.

Orang luar kalau ramai di-jadikan satu datoh dagang. Orang yang di-bawah datoh dagang itu tidak di-kadimkan. Kalau s'orang dua kĕna di-kadimkan. Tiada buleh kawin mĕlainkan di-bawah datoh dagang atau di-kadimkan.

Saya ta-pĕrnah jumpa orang situ di-kadimkan dĕripada satu suku ka lain. Saya ingat chĕrita Datoh Klana ambil satu budak prĕmpuan dĕripada Lengging (Sungei Ujong juga), di-kadimkan pada ma' dia. Sampai ini dua kĕturunan sĕhaja tapi dĕngan anak ramai sudah jadi banyak prut. Satu dĕripada anak dia sĕbab sudah jadi banyak prut itu minta kĕtua pada Datoh Klana. Sĕbab kaseh pada dia Datoh Klana bĕri satu buapa', Panglima Sutan, pada dia di-bawah Limbaga Sutan. Jadi prĕmpuan yang asal itu hilang pĕsaka-nya asal dan tadapat pĕsaka Limbaga Johan. Tapi saya pĕrchaya prĕmpuan itu tada pĕsaka awal. Orang Lengging itu bahru datang dĕri Mĕnangkabau. Jikalau dia ada pĕsaka dahulu harus ta-jadi bagitu.

Těntang prěmpuan tua yang měngangkat budak prěmpuan měnjaga dia: Ma' měntua saya to' saudara dia ada satu nama Haji Fatima. Haji Fatima itu tada anak bětina dan tada anak jantan. Kěmdian dalam anak-anak saudara dia banyak, jantan ada, bětina pun ada. Satu děripada chuchu saudara prěmpuan, ialah ma' mentua saya, dia kaseh itu, dan dia bawa dudok sama. Apabila dia mati sěrah-lah tanah ai dan tapak rumah kěpada mak měntua saya. Itu děngan tidak di-kadimkan, krana ia waris juga, tětapi tidak di-bagi hěrta antara waris lain mělainkan sěmua hěrta di-běri pada satu děripada waris, budak yang di-angkat itu.

Adat-nya kadimkan orang luar:

Ada satu orang Pulau Pinang dia datang laki bini na' dudok kampong itu. Bila sampai dia dah tahu rěsam situ adat běrkadimkan (dia chari ma' angkat). Ma' angkat itu yang bawa kěpada limbaga. Bila tua sudah tahu sěmua-nya dia-lah buat satu kanduri di rumah ma' angkat itu. Masa itu-lah orang buka chěrita, buka pěraturan pěrpateh, masa di-sěbutkan

"Děkat měnchari waris
Jauh měnchari suku."

Ada banyak yang di-sěbut lagi. Kěmdian prěmpuan itu měmbawa těmpat sireh pěrgi měngěnali buapa' dan limbaga: tahu-lah ia sudah masok suku. Dan laki pun datang pula měngěnali kěduanya itu dan waris-waris ma' angkat itu. Sa-olah-olah masa itu tahulah ia yang dia sudah jadi orang sěměnda pada suku itu. Ada kata "Orang sěmanda di-suroh pěrgi, di-panggil datang".

Prěmpuan sudah kadim, jantan sudah jadi orang sěměnda, tapayah di-kadim juga. Laki itu di-bawah prentah limbaga suku bini.

Orang yang di-kadimkan ta-buleh dapat pěsaka, pěsaka pada undang atau pěsaka harěta.

Adat chěchah darah tada.

Translation of the Above

Pěmbawa (*bringings*).

Pěmbawa is not given by the *waris* [otherwise than as follows]: Three days after the wedding the married couple go to pay their respects to the groom's parents and the latter give a complete set of cooking utensils, cups and plates, platters, jugs, and money also, as well as a change of women's raiment. That is how it is with the ordinary run of people. If the bride is rich and a *waris něgri* [in the line of eligibility to the rulership of the state] it is incumbent on her mother-in-law to give her, as well as the complete set of pots and pans and a suit of raiment, bedding and cattle. These things constitute the *pěmbawa*.

The man's *pěmbawa* is not declared [at the wedding or time of gift].

At the time they go to introduce the bride to her parents-in-law and to pay their respects to them the bride carries cakes. On her return she brings back the *pěmbawa*.

The next day the sisters of the bride, at their house, give the

bridegroom a " title " or nickname. For instance, if he is learned they dub him " Karimalin ", if he is a fencer they call him " Neckarmalin ". As the saying goes, " While young one has a name, when grown up a title ".

When the nickname has been decided upon they say, " Now these are the *dapatan* [gainings-dowry] of Neckarmalin ", and they declare his *dapatan*. Usually they recite the ancestral property [of the bride] and they mention also the house. Usually there are kampong, rice-fields and house. Things such as buffaloes, goats, dry lands, if her mother and father wish to give them they present them to her later. These gifts made subsequently are *dapatan* also, but it is unusual that there should be any trouble about them on the grounds of their not having been declared [at the time of the wedding].

The female relations of the bridegroom attend this ceremony —they come on invitation.

I have had no experience of men who had property of their own, such as bachelor acquisitions. If there is such property it is probably declared.

Dapatan.

Of *dapatan* which has increased in value, such as rubber land just planted at the time of marriage, the husband gets a share if marriage is terminated by the death of the wife, but none of it is terminated by divorce.

At divorce the [distribution of] property is recited at the house of the woman. The " *tĕmpat sĕmĕnda* ", her maternal relations, are invited. Should she be rich and a *waris nĕgri* the maternal relations of the man are also called. People who cannot obtain [the dignity of [1]] Datoh Klana [2] are called " *orang suku* " [people apart]. If the woman is an *orang suku* the husband goes to her house alone. If the woman is a *waris nĕgri* it is essential for the husband to be accompanied by his maternal relations. If they do not go and the woman complains to the Ruler he can fine them. There is a saying, " You go with torches, you return in the dark ". No woman who is a *waris nĕgri* will stand for such treatment.

Even if *dapatan* in the form of buffaloes and goats should increase much in numbers during marriage, the husband can get no share thereof.

A man who has married a rich woman falls into poverty on divorce. But he meets with friendliness from his own relations, the women look after him.

It is unusual for women to have two dwelling-houses [at the same time]—though they sometimes move from one place to another. In such a case the house which has been built in a plantation is treated as a joint conjugal acquisition.

Joint Conjugal Acquisitions.

Marriage terminated by death.

I have never in Sungei Ujong heard the saying, " On the death

[1] i.e., who are not eligible for election to it.

[2] The title of the ruler of the State of Sungei Ujong.

of the husband it remains with the wife; on the death of the wife it remains with the husband".

The death of the husband.

The general idea is to divide the property into two, the husband's maternal relations taking half, the widow half. That is what happens if there are no children. If there are children the distribution of property is in the hands of the man's maternal relations. They can take half if they like. In my own experience they have taken half or even more, even though there were children. That is the old custom. It is not quite fair. The present tendency is to resist it, to fight it on behalf of the children.

The custom would appear to be the same whether marriage is terminated by death or divorce.

The death of the wife.

The children are cared for by the woman's maternal relations.

The widower is *jĕput* [invited back to his maternal home]. In the course of that ceremony the widower can decide on the distribution of the property. When my mother died they [he and she] left a rubber plantation. He surrendered it all to his daughters, he bequeathed it to them. He returned to his mother's home with nothing [lit. with a *sarong* and his buttocks]. His *waris* did not make a fuss. Actually he did not return to them. His idea was to look after his children.

It is obligatory on a man's *waris* to invite him back, and they always do so.

As regards the reply to the invitation: My mother died. My father's *waris* invited him back; he said he accepted the invitation, but he wanted to look after his children and to live with them. One cannot say that one does not accept an invitation because the acceptance thereof has become part of the custom.

If the widower does not return to the house of his *waris*, he must nevertheless send back the presents they have given him [at the time of marriage ?].

The Care of the Children.

It is the wife's maternal relations who have charge of the children.

If at the time of "*jĕput*" the widower says he is going to look after the children he lives in his wife's house with those of her relations who come to live there also. He looks after the children together with those relations. If he marries again he can no longer live in that house; he must go to the house of his new wife.

Ancestral Property.

There are two sorts, "*pĕsaka bagi undang*" and "*pĕsaka bagi hĕrta*" [apparently "tribal dignities" and "ancestral property" proper]. As regards that which is "ancestral with reference to the ruler" (*pĕsaka bagi undang*) each *Undang* has "ancestral" dignities for his tribal chiefs. Below these chiefs of tribes come the *buapa'* [chiefs of *prut*]; below the *buapa'*, *jua'*; below the *jua'*, curators of mosques. Each of these dignitaries gets a share of the state revenue. It is these dignities which are "ancestral."

There is only one sort of ancestral property including *kampong*, rice-field, house and weapons. I am under the impression that

buffaloes and goats are not included, If [ancestral] *kampong*, rice-field, house or weapon are " lost " there is likely to be a considerable fuss made by the *waris*; but if a married couple [merely] lose livestock no such fuss is made.

As regards the time when acquired property becomes ancestral: if a couple have given acquired land to their daughters and they themselves have died, that land has become ancestral even though it be a plantation.

In these days a rubber plantation can be given to a son. I cannot remember whether it could be done formerly. Property in the hands of a son or daughter, although called ancestral, can be sold, it has not become properly ancestral. Only when it has gone down further to their children has it become properly ancestral, and sale is prohibited out of the tribe.

Acquired property given to a son goes to his children. Apparently in the matter of *pĕmbawa* children's claims are very strong.

Adoption.

If there are many foreigners a *datoh dagang* (chief of foreigners) is appointed. People under this *datoh dagang* are not adopted. If there are only a few foreigners they are adopted. No one can marry [into a tribe] unless he is either under a *datoh dagang* or has been adopted.

I have never met anyone there adopted from one tribe into another. I remember a tale about Datoh Klana taking a girl from Lengging (in Sungei Ujong also), and his adopting her to his mother. That was only two generations ago, but as she (and her children) were very prolific many *pĕruts* [families] have resulted. On account of the number of families one of the children asked the Datoh Klana for a headman. On account of his affection for them the Datoh Klana gave them a headman, the Panglima Sutan, under the Lembaga Sutan. So the original woman lost her original " *pĕsaka* " and did not obtain the " *pĕsaka* " of Lembaga Johan.[1] But I believe the woman had no original " *pĕsaka* ". The people of Lengging have only recently come from Mĕnangkabau. If she had had a " *pĕsaka* " it would hardly have happened thus.

As regards old women adopting a girl to look after them: My mother-in-law had a great-aunt named Haji Fatima. This Haja Fatima had neither sons nor daughters. On the other hand she had many nephews and nieces. She was fond of one of her great-nieces, my mother-in-law, and took her to live with her. When she died she handed over to my mother-in-law the ricelands and the land on which stood the house—without any [formal] adoption, for she was a *waris* of hers. But [contrary to that line of argument, treating her merely as a *waris*] there was no division of the property among the old lady's *waris* generally: she gave the whole of her property to one of her *waris*, the child she had informally adopted.

The custom about adopting foreigners is as follows:

A married couple once came from Penang to that *kampong*.

[1] Apparently the title of the head of the tribe which supplies the ruler of Sungei Ujong. Apparently also Lembaga Sutan is not the title of the chief of her original tribe.

When they arrived they already knew the procedure about adoption and looked for an adoptive mother. The adoptive mother took them to the *lĕmbaga.* When the chief had got to know all about it he had a feast made at the adoptive mother's house. During this feast people told ancient stories and discussed the custom. It is at this stage that they recited the saying, " Those who come from near look for relations, those who come from afar seek for a tribe ", and many other sayings. Then the [adopted] woman carried round a tray of betel leaf and areca nut in order to make the acquaintance of the chiefs of the tribe and its families: so that they should know she had entered the tribe. The husband also went round to make the acquaintance of the chiefs (lit. of both sorts of chief) and of the maternal relations of the adoptive mother. Similarly, it was that they should know that he had become a man who had married into the tribe. They said, " The man who marries is told to go, is called to come ".

The man had been adopted, he had become *orang sĕmĕnda* (married into a tribe), there was no need for him to be formally adopted also. The man is under the orders of the *lĕmbaga* of his wife's tribe.

An adopted person cannot obtain any *pĕsaka,* tribal dignity or ancestral property.

There is no ceremony of dipping a finger into blood.

APPENDIX XLII

Statement by Pareyrikal Raman Nair in English at Kuala Trengganu on 3.6.28.

I am a member of the *Nair* caste and come from the state of Cochin. I belong to the Pareyrikal *tarwād* and my name is *Raman.*

In a *tarwād* the property is held by the *karnavan,* the manager. He is the eldest male. When he dies he is succeeded by the then eldest male. The *karnavan* has almost complete control over the property of the *tarwād.* He collects all the revenues and portions out the expenditure. His only limitation is that he cannot sell or mortgage any land without the signature of every member of the *tarwād* on the deed.

All the members of the *tarwād,* male and female, should share equally in the revenue of the *tarwād* except the *karnavan* himself, who has a double share. But the apportionment is entirely in his hands.

All the members work together on the land of the *tarwād.* The land is in no way parcelled out between them. The *karnavan* sells the produce and places it in the common fund.

All the members of the *tarwād* live together in a common house, men and women. Men can go and spend the night in their wife's *tarwād,*[1] or if she is willing she can come and live in his *tarwād.* Each married couple have a room, the bachelors can sleep in the verandah if there are not rooms enough.

The *karnavan* supplies all the wants of the bachelors and pays for the education of children, but supplies only the food of married

[1] This, I believe, is the usual custom.

people. No man can marry without the approval of his *karnavan*. And the *karnavan* requires that the man have acquired sufficient private property (*sogarisuttu*) before he gives him permission. I myself am the second eldest in my *tarwād* and I am not yet married. If one wants to marry a woman of a certain *tarwād* one has to obtain the approval of the *karnavan* of that *tarwād*. One has to have enough acquired property (*sogarisuttu*) ; it is impossible for one to have any share in the *tarwād* property (*karnavasuttu*) unless partition has taken place. Marriage accordingly takes place late, say at 16 for a woman and 25 for a man ; but many men do not get married before 40.

One can marry a woman of any other *tarwād*, though she should be of the same social standing. There are great social differences between different *tarwāds*. There is no need to consider the degree of relationship so long as the two people belong to different *tarwāds*. A man and a woman who are both descended from the same great-grandmother for instance can marry. It is in fact right and proper that they should marry.

There is no grouping of *tarwāds* into larger organizations.

There are *gōthras*, but there is nothing to prevent a man marrying within his own *gōthra*.

A man can only have one wife, and a woman one husband. Marriage is called a *sambandham*, a joining.

A man's children belong to his wife's *tarwād*. They belong to her *karnavan*.

Formerly on a man's death all his *sogarisuttu* (acquired property) went to his *tarwād*, and his children could only get a share by bringing a case in court. That is still the law in British Malabar. But in Cochin and Travancore on a man's death his property is divided equally between his *tarwād* and his children. But during his life he can give as much of his *sogarisuttu* as he likes to his children. If his wife's *tarwād* is not rich enough to give them a good education and he is a rich man, he can pay for a good education.

A man can leave his *tarwād* if he wishes to. He brings a case in court and his share of the *tarwād* property (*karnavasuttu*) is given him. He does not lose the name of his *tarwād* nor its prestige by doing this.

APPENDIX XLIII

MALABAR

A letter written to me in October 1929 by Mr K. T. Pillai after typing for me the chapter on the comparative study of underlying principles. (Edited by me.)

G. A. DE C. DE MOUBRAY, Esq.,
Present.

SIR,

In connection with certain statements of a few travellers (who had no opportunity to study the conditions and meaning of the customs) I beg to point out the following: My statements are based

on my own knowledge of the Malabar custom (being myself a Malayalee) and on various reports, the most important of which is the report by a committee appointed by the Government of Travancore towards the close of the nineteenth century to inquire into the custom and inheritance of the *marumakkathayam* people. I hope my notes will be of some use to you. Please excuse me if they are not worth-while.

1. *Polyandry.* It is true that among a section of the Nayars this custom was prevalent. It was limited however to brothers, born of one mother, who had been called to take up arms. A woman could have several husbands (born of one mother) provided all of them were soldiers. The brothers who had been allowed to remain at home and look after their private business had actually separate wives. It is absurd of the travellers to say that a woman could have twelve or more husbands at a time.

The funny thing is that in Malabar the blacksmiths, carpenters and other artisans who followed patriarchy also had the custom of polyandry. So had the Tyas of North Malabar who followed matriarchy. So it is not the military profession of the Nayars alone that made a section of the Malayalees follow polyandry.

(The Nairs of Travancore and Cochin States now have regulations based on those of British Protestants.)

2. *Talikattu kallyanam.* Hindus generally have this custom, and the marriage ceremony is conducted before the attainment of puberty. When the girl attains puberty she is invited to the husband's house (till then she has been separated from her husband and has been living with her mother), and subsequently to this the connection ceremony takes place. It is the latter the Malayalees or rather Nairs call *sambandham* (union). In another shape this ceremony is performed by Brahmins and even by Tamils.

There are several forms of *tālikattu kallyānam* among Nairs:

A. Ordinarily *tālikattu* is done by a Nair man of the girl's *kulam*, and the very same man marries her and performs the *sambandham* ceremony.

B. *Tālikattu* is done by a Nair, but the *tāli* (thread) is given him by a Brahmin who utters certain mantras over it. This is done because the Brahmin is the priest and the *tāli* given after *puja* (worship) by the Brahmin is considered to be sacred.

C. *Tālikattu* is done by Brahmins. This is done only among such Nair families as thought that they were above Nairs and who had ruling powers. These people, although they were in name Nairs, in reality never enjoyed any social equality with the Nairs. But the Brahmin who ties the *tāli* could not cohabit with the girl as the girl was still a minor. It was the strict rule that the *tālikattu* must take place between her first and eleventh year.

3. *The Zamorin's family.* Although the Zamorin's family followed *marumakkathayam* they had no social connection with Nairs. They being the ruling class, always held a position higher than that of Nairs. As a result of it females of the Zamorin's family were not married to Nairs. They were only married to Brahmins. The *tālikatu* and *sambandham* were both performed by Brahmins. The Brahmin who performed *tālikattu* was bound to

perform the *sambandham* also. [Implying, I gather, a marriage *to* the Brahmin.]

This is the custom in the Cochin royal house. Women marry (both *tālikattu* and *sambandham*) Brahmins only. The reason given by the rajahs of Cochin is that they are Kshatrias come from Rājputāna. They have none of their people in Malabar. As it is opposed to their custom for them to intermarry among themselves, their women have to marry men of a higher caste, i.e. Brahmins. To this argument people agree. They are considered to be the highest caste among the rajahs of the whole of Malabar.

4. As to the statement that the Zamorin's wife is enjoyed by a Brahmin prior to her being enjoyed by her husband: this must be quite incorrect. The Zamorin marries (*sambandham*) a Nair girl. It is not compulsory that she should have been tied with a *tāli* by a Brahmin. Even if the *tālikattu* were performed by a Brahmin, the statement cannot be taken as true because the *tālikattu* takes place before the girl attains puberty.

5. As to your own remarks on the Cochin royal family: I was a student of the Ernakulam College, Cochin, for two years, 1912 and 1913. The then reigning Raja was Sir Rama Varma. He succeeded his uncle. When he abdicated (owing to old age and not to any trouble) in 1918 he was succeeded by his brother, the present Rajah Ravi Varma. The present heir-apparent is also a brother of the present Rajah. There are several nephews born to his sisters. The custom is that the eldest male member of the family, or female member if there be no male, should take the crown, and not as you state the eldest son of the eldest sister.

Although children of the females of the Nairs and of the ruling families do not inherit any property from their Nambudri father, the *sambandham* is perfectly open. The husband has every right of access to his consort's room and need not wait for midnight. According to Hindu Law a Brahmin can marry four wives, one from every caste (Brahmin, Kshatria, Vaisya, and Sudra). In Malabar also, though Nairs cannot be said to be included within any of these castes, this system of marriage to Brahmins is followed. Of course the difference is that the Brahmin is not bound to support those of his children born to a non-Brahmin wife.

6. *Forts.* It is not true that all Nair families were protected by a fort. Forts only existed round the village of a big lord or a rajah. The big fencing of wood, stone and mud, and the grand entrances at the frontage represented only the pomp and power of the family. And the fencing was not meant for the safety from attack of enemies. But it should be remembered that there were very many lords and rajahs in ancient days.

7. *The Marumakkathayam custom.* It is true as you say that there is a story that Paraṣurama introduced this custom. But why he introduced it is another question. A different account is given in the report of the Travancore Committee. It is said therein that Malabar was originally hardly known to the rest of India. People were afraid to come from elsewhere to settle there as it was mostly surrounded by hills and mountains. A few people who had come in had settled in small communities in mountainous

valleys and in river basins. These communities were independent and hostile to each other. The immigrants had to marry. As always happens with a migration to a strange country there was a shortage of women. [Owing to scarcity value ?] people did not like letting girls go to their husband's clan. So the girls remained in their parents' (mother's) house, and the men came to them. But they compensated for this in another manner. If the girl had a brother he was induced to marry her husband's sister. Hence a mutual marriage. It was thus that the property acquired by the two men went to their respective sisters' children. It was in this way that the nephews became the heirs of their uncles' property. But it brought about another evil. If a girl had several brothers and her husband had only one or two sisters, the few females had to accept more husbands, hence polyandry. Perhaps this is another reason for the introduction of the custom of polyandry.

The story as regards Parasurama is that he changed the custom of the patriarchal people of the other parts of India when he brought them to Malabar in order that they should not go back to their country for fear of excommunication by their own people themselves.

It is said that Parasurama for the same reason introduced several other reforms among the people who had been brought by him to settle down in Malabar. The custom among all Malayalees of making their topknot towards the front of the head is said to have been introduced by him. All other Indians have their knot at the back of their head, the Malayalees only in front. Malayalees wear only white clothes ; all others wear coloured clothes. Various parts of the ears and nose of the females of other communities are bored, while the Malayalees have only a single hole in the nose and in each ear. These are only a few of the reforms said to have been introduced by Parasurama.

Villages. Tamil and Malabar districts will always be different from each other. Malabar is more fertile than the Tamil districts. People can live everywhere. There are natural irrigation channels and rivers. As the Tamil districts have no such advantages the Tamils are bound to live in groups. Further, the population of Malabar is more dense and people must occupy every piece of land that may be found suitable for occupation.

I am sorry the Travancore report is in Malayalam, otherwise it would have interested you much. I again apologize for making these short notes. Please excuse my poor language.

Yours obediently,

(Sd.) K. T. PILLAI.

GLOSSARY

After each word stands in brackets the language it belongs to. (Mal) is short for Malay, (Men) for Menangkabau, (dial) for the Nĕgri Sĕmbilan dialect. The word is stated to be a dialect word only where the word itself, its form, or its meaning, differs radically from Malay.

acquired property : comparatively recently acquired property which is not subject to the restrictions characteristic of ancestral property

adat (Mal, from Arabic) : custom

adat kamanakan : inheritance by a man's nephews, pp. 51, 64

adat perpatĕh : the matriarchal custom of Sumatra and the Malay Peninsula

adat tĕmenggong : the patriarchally inclined custom of other parts of the Malay Peninsula

agnatic kinship : kinship reckoned only through the father

aliya santana (Tulu) : the matriarchal law of the Bants, p. 28

ana', anak (Mal) : child (in the sense of offspring)

bacha (Mal) : literally to read, to recite settlements of property

bali (Tulu) : exogamous sects among the Bants, p. 28

bapa' (Mal) : father

batang tuboh (Mal) : the ceremony of giving back the relics of the husband's body, forming a part of the hundredth-day ceremony, p. 150

bĕlah (Mal) : to cleave longitudinally into two

di-bagi bĕlah pinang (dial) : literally "to apportion the areca nut split into two," said of the division of property equally between a man and his wife's *waris* when she dies childless, p. 253

bĕradat derived from *adat :* custom

orang bĕradat : a man holding an office under the tribal constitution (and thus in a specially intimate relation with the custom ?), p. 122

bĕrgĕlar : to have a title, v. *gĕlar*

bĕsar kampong : the head of a *kampong*, p. 23

bini, wife

bujang (Mal) : unmarried, applied equally to bachelordom or to the condition after divorce from, or death of, the partner

bulat (dial) : unanimous approval of a measure

chachat (Mal) : a taint

chari (Mal) : to look for, to get

charian (more properly, though less often heard in this part of the country, *pĕncharian*) : acquisitions corresponding to the Anglo-Indian term "self-acquisitions"

charian bujang : property acquired by a man or woman while unmarried

charian laki bini : joint conjugal acquisitions

chĕchah (Mal) : to dip the finger into anything

chĕchah darah (dial) : the ceremony of adoption in which both parties dip a finger in the blood of a slaughtered animal, pp. 186–8

chĕndĕrong mata : p. 132 and note

chĕrai (Mal) : divorce, more exactly a breach of any sort in the marriage relation between two people

chĕrai mati : " divorce " by the death of one of the parties, p. 41
chĕrai hidop : divorce proper
cognatic kinship : kinship reckoned through both parents

dagang : foreigner
Datoh Dagang : a chieftain over foreigners
dan (Mal) : and (Dial) : I
dapatan (Mal) : literally " gainings," from *dapat*, to obtain : the property a woman brings to marriage. It includes her share of her parents' property, either inherited or given her at marriage or shortly after, and her share of the joint acquisitions of any former marriage

ēdam (Malayalam)
I The name given to joint families among certain royal families of Malabar
II Their palace, p. 29
ejuman (Tulu) : the manageress of a joint family among the Bants, p. 93

gĕdang (dial) : big
gĕlar (Mal)
gĕlaran : a title
giliran (from *gilir*, to rotate) : the rotation among families of the right to fill a vacant chieftainship, compare p. 23
gōtra (Sanskrit) : the community worshipping a common male ancestor, the exogamic unit under patriarchal Hindu custom, p. 32.

haratō : Mĕnangkabau for *hĕrta*
haratō dapatan : dapatan
haratō pembawaowan : pĕmbawa
haratō suarang : charian laki bini, p. 163
harta (Mal) : property
The dialect pronunciation is usually *harĕtō*
harta pĕncharian (Men) : corresponds with the dialect term *charian*
hĕrta tĕrbawa : uncertain meaning, see Note, p. 121
hibah (Arabic) : a gift
hutang (Mal) : debt
hutang adat : debts of custom, see p. 122
hutang pĕsaka : debts of inheritance, see pp. 122–3

ibu buapa', *ibu bapa'*, or simply *buapa'* (dial) : literally father and mother, the head of a *pĕrut*, p. 23

jantan (Mal) : male, (vulgarly) a man
jĕput (Mal) : invitation
The invitation of a man back to his maternal home and tribe at the time of the 100th day ceremony after his wife's death, pp. 145, 146, 154, 157
joint family : a family the property of which is owned communally by its members

kadim (Mal) : closely related (matrilineally of course)
kadim kan : to turn into a close relation, in other words to adopt
sakadim (in dialect *so kodin*) : close relations
kalyānam (Malayalam) : marriage, p. 42
kamanakan (Men) : the sisters of a man's children
see *adat kamanakan*
kampong (Mal) : I, Mixed orchard land, in which the houses are usually built, each standing on its own piece of land. II, A piece of such orchard land. III, A stretch of such orchard land with its houses forming the equivalent of a village
In one of the sayings they use *sudut* (the " head " of a rectangular thing, as a piece of land or a mat), as a numerical coefficient, *kampong sĕsudut :* a *kampong*. IV, A division of a tribe, pp. 23, 25
karanavan (Malayalam) : the manager of a joint family, p. 30, note 3

karnava suththu (Malayalam) : joint family property, p. 282
kĕmbali ; to return to whence it came
kĕpan (Mal, in dialect pronounced *kŏpan*) : I, a shroud
II, A piece of land settled for the purpose of defraying the expenses of a person's maintenance in old age, last sickness and death, p. 154
kota (Mal) : I, fort
(Men) : II, village, p. 25
kōvilagam (Malayalam) : I, Joint families among the royal families of Malabar, p. 29
II, The palace in which the family lives
kritrima (Sanskrit) : a secular and very ancient form of Hindu adoption, p. 172
kūlam (Malayalam) : the exogamic unit in North Malabar, pp. 32, 66
kumpulan rumah (Men) : a ward in a village containing members of only one tribe, pp. 25, 72
kūttam (Malayalam) : the assembly which governed a country (*nād*), p. 30

laki (Mal) : husband
laras (Mal) : I, the barrel of a gun, *snapang dua laras*, a double-barrelled gun
(Men) : II, an original grouping of tribes, p. 25
lĕmbaga (Mal) : *limbagō* (dial) : the head of a tribe, p. 23
levirate marriage : the custom by which a widow on the death of her husband devolves upon one of his male relatives

ma', mak, ōma' (dial) : mother
mamak (Mal) : uncle
mas, ŏmeh (dial) : gold
mati (Mal) : to die
matriarchy : the whole social system among communities characterised by matriliny
matriliny : the custom of tracing descent solely through women
mĕnyalang (Mal from *salang*) : to present themselves before the bridegroom's parents, of a newly married couple, p, 148

nād (Tulu, Malayalam) : a country, corresponding with the Malay *nĕgri* and Mĕnangkabau *nĕgari*, p. 27
nama (Mal) : a name
bĕrnama : to have a name
Nambudri (Malayalam) : a high Brahmin caste, which claims to be the holiest in India. It has peculiar relations with the Nayar caste, p. 44
nĕgari (Men) : matriarchal states, p. 25
nĕgri (Mal) : a country or state

orang (Mal) : man
orang bĕradat (dial) : a man holding a tribal dignity
orang suku : a person outside the zone of eligibility to the chieftainship of a tribe

pakat (Mal) : agreement
parental family : a family in which kinship is reckoned through both parents
parui (Men) : the Mĕnangkabau form of the Malay word *pĕrut*, q.v.
patriarchal family: a family the property of which is owned solely by the male head of the family
patriarchy : the social system of races characterised by patriliny
patriliny : the custom of tracing kinship solely through men
pĕmbawa (Mal) : literally " bringings," property brought to marriage by a man, including (i) gifts from his parents, and (ii) property formerly acquired by himself, pp. 139–47
pĕndapatan (Mal) : the more correct, though in Nĕgri Sĕmbilan far the less usual form of the word *dapatan*, q.v.
pĕnghulu (Mal) : *panghulu* (Men) : the head man
In Nĕgri Sĕmbilan is applied only to the head of a state
panghulu kampong (Men) : the head of a *kampong*
panghulu puchuk (Men) : the head of each tribe in a *nĕgari*,
tungganai panghulu rumah (Men) : the head of a *prut*

pĕrut, prut : (Mal) : I, belly, womb (dial) : II, a matriarchal family in a large sense, a sub-division of a tribe, originally a household

pĕsaka (Mal) : inherited property, an heirloom, ancestral property, inherited rights of the family, p. 125

tanah pĕsaka : ancestral property, p. 24

pusaka (Men) : corresponds to the Malay *pĕsaka*, (dial) *pŏsakō*

hĕrta pusaka : joint family property

rumah (Mal) : house

sambandham (Malayalam) : the easily dissoluble marriage of the Nayars

sawah (Mal) : Rice land in which the rice plants, more properly "padi," are grown with their roots submerged. In order to keep the water at an even depth over the soil the land is more or less terraced and divided into compartments by little dykes. These compartments are spoken of as *lĕpa'*

lĕpa' is used in one of the sayings as a numerical coefficient for rice-fields

self-acquisition : property acquired by oneself, in contradistinction to inherited or to joint family property

sĕluar (Mal) : trousers

sĕmĕnda (Mal) : a matriarchal marriage, entailing living with the bride's relations, p. 25

orang sĕmĕnda : the husband, pp. 277, 281

tĕmpat sĕmĕnda : the bride's home ; by extension, her relations, p. 140, note

sogarisuttu (Malayalam) : acquired property, p. 282

sthānam (Malayalam) : a lordship, p. 29

sthāni (Malayalam) ; a lord, p. 29

suarang (Men) : joint conjugal acquisitions, p. 164

suku (dial and Men) : tribe (Mal) : I, a quarter II, apart

orang suku : people outside the circle of eligibility to the chieftainship of a tribe, p. 278

tāli-kattu-kalyānam (Malayalam) : marriage by the tying of the thread, p. 42

tanah (Mal) : earth, land

tāra : the Nayar and Bant territorial unit for civil purposes, originally composed of four families, pp. 27, 30 (note 2)

tarwād (Malayalam) :
I, the joint matriarchal family of the Nayars and Bants
II, the house of such a joint family, p. 32

tĕntu (Mal) : certain

tĕntu-kan : to settle property on someone, pp. 155–7

timbang (Mal) : to weigh, both in the direct and figurative senses of the word

timbangan : by extension, the distribution of property after death, p. 251

tinggal (Mal, in dialect *tinggā*) : to remain

tungganai panghulu rumah (Men) : the head of a *pĕrut*

tuwō rumah (Men) : the head of a *pĕrut*

Undang : the ruler of a matriarchal state, compare *undang-undang*, a law

utang (dial) : see *hutang* (Mal)

waris (dial) : female blood relations on the maternal side

waris bĕtina : waris of the woman

waris jantan : waris of the man, p. 24

waris nĕgri : a person in the line of eligibility to the rulership of a state, i.e. the term includes women, who are not themselves eligible, but can transmit eligibility to their offspring, p. 141

zamorin (Malayalam) : king, p. 29

INDEX

In view of the full analytical table of contents this index has been reduced to very modest proportions.